

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO.188 OF 2023
WITH
ORIGINAL APPLICATION NO.189 OF 2023**

DISTRICT : NASHIK

O.A.No.188/2023

1. Mr. Bhaskar Ramnath Waykande)
R/at. At Post Chanderi, Tal. Niphad)
Dist. Nasik.)
2. Mr. Murlidhar Vishwanath Kadale)
R/at.534, Near Siddhi Vinayak)
Ganesh Mandir, Ashok Nagar,)
Satpur, Nasik.)

WITH

O.A.No.189/2023

1. Mr. Popat Nathu Nagare)
R/at. Matoshree Building,)
Talenagar, Ramwadi, Dist. Nasik)
2. Mr. Alimuddhin A. Shaikh,)
R/at. Plot No.13, Sadik Nagar,)
Wadala Gaon, Dist. Nasik, Nasik) **...APPLICANTS**

VERSUS

1. The Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai.)
2. The Commissioner of Police,)
Nasik City, Gangapur Road,)
Opposite K.T.H.M. College, Nasik) **..RESPONDENTS**

Mr. K.R. Jagdale, learned Counsel for the Applicants.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil (Member) (A)

DATE : **27.02.2024.**

J U D G M E N T

1. There are four applicants and a common departmental enquiry is conducted against the applicants and at the request of learned counsel for the applicants the matters are heard together and disposed of by a common order.

2. Learned counsel submits that all the four applicants were working as Police Constables at Central Jail, Nasik. Learned counsel submits that all the applicants challenged the order of dismissal dated 3.10.2002 passed by the Respondents after conducting common departmental enquiry against them.

3. Learned counsel submitted that FIR was filed on 26.12.1999 under CR No. 294/1999 for offences punishable under Section 222, 224 of IPC. All the applicants were prosecuted. Learned counsel has further submitted that all the applicants were acquitted from the Criminal Case No. 936/2003 by judgment and order dated 9.2.2022 passed by the Additional Chief Metropolitan Magistrate, 2nd Court, Mazgaon. Further no appeal has been preferred by the State against the said order of acquittal.

4. Learned counsel has submitted that the departmental enquiry was initiated against the applicants on 30.12.1999 and on the same day the applicants were suspended and charge sheet was served on the same day. On 3.3.2002 the Enquiry Officer submitted the report and the applicants were held guilty and the Enquiry Officer recommended that their pay should be brought down to the original basic pay and they should be given salary on the said basic pay for a period of 5 years. Thereafter show cause notice was given to the applicants on 10.7.2002 and the applicants submitted their reply on 3.8.2002. The Disciplinary Authority, i.e., Commissioner of Police, Nasik by order dated 3.10.2002 dismissed the applicants from service. The applicants filed appeal before the Appellate Authority, i.e., Secretary, Home Department. The Appellate Authority by order dated 16.1.2007 confirmed the order passed by the Disciplinary Authority. Learned counsel submitted that as the applicants are acquitted in the Criminal case, there is no stigma cast on the applicants and therefore the benefit of the Criminal case should have been given to the applicants in the departmental enquiry while holding them guilty.

5. Learned P.O. submitted that criminal proceedings and departmental enquiry are two different proceedings and even if the Government servant is acquitted in the criminal trial,

then exoneration of such Government servant in the departmental enquiry is not a necessary corollary. Learned P.O relied on the decision of the Hon'ble Supreme Court in the case of **UNION OF INDIA Vs. DALBIR SINGH & ORS, C.A 5848/2021 arising out of SLP (C) No. 24095/2019.**

6. Learned P.O. while assailing the submissions of learned Counsel has submitted that the Applicants challenge to dismissal order dated 03.10.2002 only on the ground of their acquittal from the Criminal Case on 09.02.2022 and pray that they are to be reinstated on the post of Police Constable with all consequential service benefits. However, the order passed by the Appellate Authority confirming the order of dismissal is not challenged by the Applicants. Learned P.O. has submitted that the acquittal in the Criminal case cannot have bearing over the decision taken in the Departmental Proceedings as they are two different channels where the parameters of proof are different. Learned P.O. relied on the judgment of Hon'ble Supreme Court in the case of ***Dalbir Singh (supra)***.

7. In the case of ***Dalbir Singh (supra)*** the Applicant was prosecuted for firing service revolver and thereby causing death of colleagues. He was convicted by the Trial Court and so sentenced to life imprisonment. However, Hon'ble High Court of Punjab and Harayana acquitted him and that was

confirmed by the Hon'ble Supreme Court. Thereafter in the D.E. he was held guilty. In the case of ***Dalbir Singh (supra)*** the Hon'ble Supreme Court has relied and referred the ratio laid down in the case of **Ajit Kumar Nag Vs. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors.** wherein it is held that the acquittal by a criminal court would not debar an employer from exercising power in accordance with the rules and regulations in force. However, the said procedure is not applied to the Departmental proceedings. The degree of proof is always higher in the Criminal case than the D.E., wherein the decision mainly rest on preponderance of probability so also rules relating to the presence of evidence in two proceedings are different. The object of Criminal trial is to inflict appropriate punishment and purpose of D.E. is to dealt with the delinquent on the background of misconduct and breach of Rules and therefore acquittal in the Criminal trial not necessarily is the factor having all the time bearing over the decision in the D.E. There can be the decision of holding the delinquent officer guilty despite of his acquittal in the Criminal case and pursuance of evidence and satisfaction of the judicial mind on both the sides i.e., in the Criminal trial and in the D.E. stand on different footing.

8. In the present case the Applicants have challenged dismissal order. No specific case is made to show how the

procedural flaw by the enquiry officer went wrong and mistake is committed in not following appropriate procedure. But the main bone of contention is that the acquittal in the criminal case should release in exonerating the delinquent officer / Civil Servant from the D.E. also. The order of the Appellate Authority thereby confirming the dismissal order passed by the Disciplinary Authority is not challenged in this O.A. Learned Counsel for the Applicants has heavily relied on the judgment dated 09.02.2022 (Exhibit-J) passed in CC.No.936/PS/2003. He relied on paragraphs 25 & 26 of the said judgment. In the said two paragraphs the Hon'ble Magistrate has held that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and there is no material to show that Under Trial Prisoners (UTP) who were in the custody of the present Applicants tried to escape. The present applicants have as per the allegations allowed UTP's to escape from lawful custody of the police. In the said paragraph the Judge has also stated that the Investigating Officer has not examined and find detrimental to the case. May that as it be.

9. The said order was not challenged by the State in appeal. Hence the said judgment of acquittal as on today holds field. However, there is basic different in the criminal trial and the D.E. as we have stated above while discussing

the law laid down in the case of ***Dalbir Singh (supra)*** by the Hon'ble Supreme court and in the case of ***Ajit Kumar Nag (supra)*** we do not want to go into the merits of the D.E. However, report dated 03.03.2002 which is in detail and the Applicants instead of travelling in the public transport have hired jeep from the private persons while taking them to Thane Jail. They took them to their residence at Mohammed Ali Road, Mumbai and they assisted the UTP's to run away from the Police Custody. It is pointed out that there is no procedural flaw in the D.E. and under such circumstances, the scope of this Tribunal to interfere with the order passed in the D.E. is limited.

10. We don't find any merit in the challenge given to the order of dismissal dated 03.10.2002 passed by the Disciplinary Authority against the Applicant.

11. Hence, O.A. stands dismissed.

SD/-
(Medha Gadgil)
Member (A)

SD/-
(Mridula Bhatkar, J.)
Chairperson

ank/prk