

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 805 of 2023 (D.B.)**

Suresh Ganpatrao Wagh,  
Age: 59 Years, Occu:- Retired, R/o Mahavir Nagar,  
Sutgirni Road, Amravati, Tq. & Dist. Amravati.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary, Law and Justice Department,  
Mantralay, Mumbai-32.
- 2) Chief Secretary,  
Legal Affairs and Appellate Officer,  
Law and Justice Department, Mantralay, Mumbai-32.
- 3) Charity Commissioner,  
Maharashtra State, Second Floor,  
Sasmira Building, Sasmira Road,  
Warli, Mumbai-400 030.

**Respondents.**

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**Shri Parag A. Kadu, Advocate for the applicant.**  
**Shri M.I. Khan, learned P.O. for respondent.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar, Vice Chairman and  
Hon'ble Shri Nitin Gadre, Member (A).**

**Dated :- 10/09/2024.**

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**J U D G M E N T**

Heard Shri P.A. Kadu, learned counsel for the applicant  
and Shri M.I. Khan, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was working as a Senior Clerk in the office  
of respondent no.3. One of the female co-employees made allegations

against the applicant that he had made sexual contact with her. That female employee lodged report in the Police Station. The respondent no.3 has initiated departmental inquiry. Simultaneously, criminal case was registered against the applicant for same allegation. The applicant is acquitted by the Judicial Magistrate First Class (JMFC) by recording findings that the evidence of complainant is not reliable because the witnesses have stated contradictory statement before the Court. The respondents have passed final order in the departmental inquiry by which the pension of the applicant is withheld permanently. The said order was challenged before the Appellate Authority. The said Appellate Authority has recorded its findings in paa-10 and remanded the matter to the Disciplinary Authority. The applicant has challenged the order of Disciplinary Authority before this Tribunal by filing this O.A. for the following reliefs –

*“(X) (I) Quash and set aside the order dtd. 05/06/2023 passed by respondent no. 2 (Annexure 1) in Appeal No.4/2023 with the direction to the respondents to pay all pensionary benefits to the applicant in the interest of justice.”*

3. The O.A. is strongly opposed by the respondents. It is submitted that the principle of departmental inquiry and criminal case both are different and therefore the applicant cannot get the benefit of acquittal in the criminal case. Hence, the O.A. is liable to be dismissed.

4. During the course of submission the learned counsel for applicant has pointed out para-10 of the impugned order. The para-10 is as follows –

*“(10) If the concern of the Disciplinary Authority was that the delinquent will not get retirement benefits without the disciplinary enquiry is disposed of, it was open for the Disciplinary Authority to sanction provisional pension under Rule 130 of the Pension Rules, pending the disciplinary enquiry and criminal case. Hence, the reason given by the Disciplinary Authority to pass the final order without giving hearing to delinquent, without getting details as to pendency or decision in criminal case is not convincing. I do not agree with the arguments of Shri Vaibhav Jadhav, Deputy Charity Commissioner that the delinquent/accused is given benefit of doubt by Ld. JMFC and there is no honourable acquittal. The Ld. JMFC while acquitting the accused on 10-01-2023, has observed that, "there is variance in the testimony of material witnesses. The conduct of informant subsequent to incident as well as discrepancies in her evidence as well as evidence of other witnesses, does not inspire confidence. Therefore, the evidence of prosecution does find not cogent, consistent and trustworthy to rely upon." These being the observations of Ld. JMFC, this itself shows that the acquittal of delinquent/accused is on merits of the case and it cannot be said that delinquent/accused is given benefit of doubt and it is not honourable acquittal.”*

5. The applicant is retired during the pendency of departmental inquiry on 31/05/2022, whereas, the order passed by disciplinary authority is dated 19/07/2022.

6. The learned counsel for applicant has pointed out the Judgments of the Hon'ble Supreme Court in the case of **G.M. Tank Vs. State of Gujarat & Ors., (2006) 5 SCC,446** and in the case of **Ram Lal Vs. State of Rajasthan & Ors., in Civil Appeal No.7935/2023, decided on 04/12/2023.**

7. As per the cited Judgments, acquittal in criminal trial is based on the same set of facts in the departmental inquiry. Therefore, there is no evidence against employee to hold him guilty. The employee honourably acquitted in criminal trial during the pendency of proceeding challenging dismissal. Finding to contrary recorded in the departmental proceeding in such case held unjust, unfair and oppressive. Dismissal order is not sustainable hence set aside. Relevant para in the Judgment is reproduced below –

*“A. Service Law -Departmental enquiry - Acquittal in criminal trial Sustainability of dismissal of employee concerned in case of - Departmental enquiry and criminal proceedings based on same set of facts, charges, evidence and witnesses - No evidence against employee to hold him guilty- Employee honourably acquitted in criminal trial during pendency of proceedings challenging dismissal--Finding to contrary recorded in departmental proceedings in such case, held, unjust, unfair and oppressive --Dismissal order not sustainable--Hence set aside - Prevention of Corruption Act, 1947, S. 5(1)(e) r/w S. 5(2) - Prevention of Corruption Act, 1988, S. 13(1)(e) r/w S. 13(2) - Constitution of India, Art. 311.”*

8. The Hon'ble Supreme Court in the case of **Ram Lal Vs. State of Rajasthan & Ors.** (cited supra) has recorded its findings in para-12,13,24 to 27 as under –

*“12. We are also conscious of the fact that mere acquittal by a criminal court will not confer on the employee a right to claim any benefit, including reinstatement. (See Deputy Inspector General of Police and Another v. S. Samuthiram, (2013) 1 SCC 598).*

*13. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. [See G.M. Tank vs. State of Gujarat & Others, (2006) 5 SCC 446, State Bank of Hyderabad vs. P. Kata Rao, (2008) 15 SCC 657 and S. Samuthiram (supra)].*

*24. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 - original mark sheet of the 8<sup>th</sup> standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the prosecution were either letters or a duplicate mark sheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of*

*the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [See S. Samuthiram (Supra).]*

*25. Expressions like "benefit of doubt" and "honorably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original mark sheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.*

*26. We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, "not proved" - in fact the charge even stood "disproved" by the very prosecution evidence. As held by this Court, a fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither "proved" nor "disproved" [See Vijayee Singh and Others v. State of U.P. (1990) 3 SCC 190].*

*27. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just*

*similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank (supra)."*

9. The learned P.O. has pointed out the Judgment of the Hon'ble Supreme Court in the case of **Uttar Pradesh & Ors. Vs. Rajit Singh, 2022 SCC Online SC 341** and **Shashi Bhushan Prasad Vs. Inspector General, Central Industrial Security Forest and Ors. (2019) 7 SCC,797**. In view of the facts recorded by the Appellate Authority in para-10 of the impugned order and in view of the Judgments of the Hon'ble Supreme Court in the case of **G.M. Tank Vs. State of Gujarat & Ors.** and in the case of **Ram Lal Vs. State of Rajasthan & Ors.**, the cited Judgments are not applicable to the case in hand.

10. In the present case, the applicant was charge sheeted before the JMFC for the same set of facts and / for the same charges levelled against him in the departmental inquiry. The applicant is acquitted by the JMFC by recording its findings that the evidence of complainant is not reliable. The Appellate Authority in the impugned order has also recorded the said finding in para-10, but instead of quashing the impugned order passed by the Disciplinary Authority remitted the matter back. In fact, the Appellate Authority has come to

the conclusion that evidence of complainant was not reliable. Hence, on the same set of facts in which the applicant is acquitted by the JMFC, the departmental inquiry shall not be continued. Hence, we proceed to pass the following order—

**ORDER**

- (i) The O.A. is allowed.
- (ii) The impugned order passed by respondent no.2 dated 05/06/2023 in appeal no.4/2023 is hereby quashed and set aside.
- (iii) The respondents are directed to pay pension and pensionary benefits to the applicant.
- (iv) No order as to costs.

**(Nitin Gadre)**  
**Member(A).**

**(Justice M.G.Giratkar)**  
**Vice Chairman.**

**Dated** :- 10/09/2024.

dnk.



I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman and  
Member (A).

Judgment signed on : 10/09/2024.