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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)

ON THE 31st OF JANUARY, 2023

MISC. CRIMINAL CASE No. 61903 of 2022

BETWEEN:-

**PRADEEP KUMAR YADAV S/O SHRI RAMMURTI
YADAV, AGED ABOUT 50 YEARS, OCCUPATION:
SHANTER (LOKO PILOT) R/O R-1859, SHARDA COLONY,
NEAR GOVERNMENT TAP, BADAGHAT, NKJ RAOD,
KATNI DISTRICT KATNI (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI HEERA LAL YADAV - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH RAIL
PROTECTION FORCE (RPF) NKJ JABALPUR DISTRICT
JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI NAGENDRA SINGH SOLANKI - PANEL LAWYER FOR THE
RESPONDENT/STATE)**

सत्यमेव जयते

*This application coming on for admission this day, the court passed the
following:*

ORDER

The petitioner has filed the present petition under Section 482 of Cr.P.C. for quashment of the order dated 27.09.2022 passed by the Court of Special Railway Magistrate in RCT No.9068/2015 and the order dated 26.11.2022 passed by the Court of 10th Additional Sessions Judge, whereby, the application for dismissal of pending criminal case has been rejected.

As per the prosecution case, the allegation against the petitioner is that he has committed theft. After department enquiry, FIR was lodged against the

applicant.

Learned counsel for the petitioner submits that petitioner has been convicted and punished in the departmental proceedings so criminal proceedings is not maintainable against the present petitioner in the light of Article 22 of the Constitution of India. It is also submitted that no person shall be prosecuted and punished for the same offence more than once as per the Constitution of India.

Learned trial Court as well as the Revision Court have violated the mandate of Constitution. The petitioner has already been punished by the competent authority in departmental proceedings. No person shall be prosecuted or punished more than once for same offence. It will be illegal as well as violation of settled legal Principle.

I have heard both the learned counsel for the parties and perused the impugned orders.

Admittedly, the petitioner was convicted and punished in departmental enquiry proceedings by Competent Authority and criminal case is also pending regarding same act before Competent Court of law.

In Captain M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 reads as under:-

"As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basis principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we, understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings in a criminal case and the

departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance."

The Apex Court in the case of **Karnataka Power Transmission Corp. Ltd. v. C. Nagaraju, (2019) 10 SCC 367** held as under:-

"It is settled law that the acquittal by a criminal court does not preclude a departmental inquiry against the delinquent officer. The disciplinary authority is not bound by the judgment of the criminal court if the evidence that is produced in the departmental inquiry is different from that produced during the criminal trial. The object of a departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a departmental inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the inquiry officer in the disciplinary proceedings, which is different from the evidence available to the criminal court, is justified and needed no interference by the High Court."

23. In R.P. Kapur v. Union of India a Constitution Bench of The Apex Court observed as under: -

"If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal proceedings may follow, where the acquittal is other than honourable."

24. In Corpn. of the City of Nagpur v. Ramchandra the same question arose before the Apex Court and the Apex Court in para 6, held as under:-

"6. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction [discretion] in any way fettered.

(emphasis supplied)

27. In Ajit Kumar Nag v. G.M. (PJ), Indian Oil Corpn. Ltd. the Apex Court in para 11 held as under:-

11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is

fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. **The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence.** Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.

28. The Apex Court in **Depot Manager, A.P. SRTC v. Mohd.**

Yousuf Miya in para 8 held as under:-

"The purpose of departmental enquiry and of

prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. "Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case

depending on its own facts and circumstances. In this case, the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings."

On above discussions, it reveals that criminal proceedings and departmental proceedings may run parallel. Acquittal of the appellant by a criminal Court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The degree of proof which is necessary to order a conviction in criminal case is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". There is no constitutional bar that criminal proceedings cannot be held by the departmental proceedings.

After conviction and punishment by the disciplinary authority, it cannot be said that in a criminal proceedings, the person or delinquent officer/accused cannot be convicted. The order of punishment in department enquiry which is based on the evidence lead before the inquiry Officer in the disciplinary proceedings, is different from the evidence available to the criminal Court. Thus, impugned order is justified and it cannot be interfered by the High Court.

Hence, no case for interference is made out. The petition is dismissed.

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