IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Chief Justice SUJOY PAUL
&
The Hon'bleJusticePARTHA SARATHI SEN

WP.CT 75 OF 2010

ASIM KUMAR PAUL
-Vs-
UNION OF INDIA & ORS.

For the Petitioners:	Mr. Debottam Das, Adv., Mr. Tirupati Mukherjee, Adv.
For the Union of India:	Ms. Amrita Pandey, Adv., Mr. Ghanshyam Pandey, Adv.
Hearing concluded on:	13.05.2026
Judgment on:	19.05.2026

PARTHA SARATHI SEN, J. : –

1. In this writ petition as filed under Article 226/227 of the Constitution of India the order dated 24.07.2009 passed in OA no. 763 of 2004 by the Central Administrative Tribunal, Kolkata Bench (Tribunal in short) is assailed. While passing the impugned order the said Tribunal upheld the enhanced punishment of the original applicant as imposed by the appellate authority that is "removal from service" which has been affirmed by the revisional authority.

2. For effective adjudication of the instant writ petition, the facts leading to filing of the said OA are required to be dealt in a nutshell. In the year 1994 the writ petitioner was posted as Senior TNC/NH and on 06.06.1994 he was served with a memorandum containing article of charge for alleged contravention of Rule 3(1)(i), (ii) and (iii) of Railway Service Conduct Rules, 1966 ('Rules' in short) together with a statement of imputation of charge containing alleged fraudulent act with an intention to defraud the railway administration.

3. On the basis of the aforementioned charge and statement of imputation of charge, an in-house enquiry was held wherein the enquiry officer found that the charge as framed against the writ petitioner/ original applicant has been duly proved. The disciplinary authority after considering such enquiry report vis-à-vis the representation of the delinquent imposed a punishment of 01(one) grade below in the time scale for 02(two) years with cumulative effect which would operate to postpone future increments on the expiry of the punishment upon the writ petitioner.

4. Feeling aggrieved, the writ petitioner preferred an appeal before the appellate authority. Upon presentation of the said appeal the appellate authority found that the punishment as imposed by the disciplinary authority is inadequate and thus, under cover of a memo dated 15.07.2003 the appellate authority asked the delinquent that is the writ petitioner/ original applicant to show cause as to why the punishment would not be enhanced to "removal from service". The writ petitioner/ original applicant replied to such show cause. The appellate authority was not satisfied with the cause shown by the writ

petitioner under cover of his reply dated 06.08.2003 and accordingly, the punishment of the writ petitioner/ original applicant was enhanced to "removal from service". The writ petitioner/ original applicant unsuccessfully challenged the order of the appellate authority before the revisional authority as well as before the said Tribunal.

5. In course of argument Mr. Das, learned Advocate appearing on behalf of the writ petitioner/ original applicant at the very outset took us to the charge as framed against the delinquent as well as the statement of imputation of charge. It is submitted that on careful perusal of the article of charge together with statement of imputation of charge it would reveal that the respondent authorities in the said enquiry proceeding as initiated against the writ petitioner/ original applicant proceeded on the basis that on account of alleged mala fide and fraudulent act of the writ petitioner/ original applicant in discharging his duty, fraudulent delivery of the consignment at Siwan to a person took place who is not the consignee of the said consignment causing huge loss to the railway administration. At this juncture, learned Advocate appearing for the writ petitioner/ original applicant draws our attention to the supplementary affidavit as affirmed on 20.08.2024. It is submitted that from Annexure-'A' of the said supplementary affidavit being a copy of the judgment dated 25.06.2019 as passed in Criminal Appeal No. 108 of 2007 by the learned Additional Sessions Judge- V, Saran at Chapra, it would reveal that while acquitting the writ petitioner/ original applicant from the charges under Section 420/408/468/471/120B IPC the said appellate Court came to a

finding upon appreciation of evidence of the PWs and DWs that the charges as framed against the writ petitioner/ original applicant in the criminal trial were not proved.

6. It is further submitted by the learned Advocate for the writ petitioner/ original applicant that on careful perusal of the charges as framed against the writ petitioner/ original applicant in the criminal trial it would reveal that the charges as framed against the writ petitioner were of cheating, criminal breach of trust, forgery etc. together with the charge of criminal conspiracy on account of alleged fraudulent act of the delinquent. Placing reliance upon the judgment of the Hon'ble Supreme Court in the case of ***MaharanaPratap Singh vs. State of Bihar*** reported in ***2025 INSC 554:2025 SCC OnLine SC 890*** it is submitted that since the charges, evidences, witnesses and circumstances in the departmental enquiry and the criminal proceedings are identical or substantially similar, the findings of the enquiry authority, disciplinary authority, the revisional authority and the impugned judgment of the Tribunal on account of acquittal of the writ petitioner/ original applicant in the criminal trial may be set asideand thus, appropriate relief/ reliefs may be granted to the writ petitioner as prayed for in this writ petition.

7. *Per contra*, Ms. Pandey, learned Advocate appearing on behalf of the respondent/ Union of India and its instrumentalities submits before this Court that there cannot be any occasion to disturb the finding of the appellate authority as well as the revisional authority vis-à-vis the impugned order of the Tribunal in view of the fact that the writ petitioner was acquitted from the

criminal trial. It is further submitted that the two proceedings that is; the criminal trial and domestic enquiry are distinct from each other and the degree of proof in a domestic proceeding is different from that of a criminal trial since in the former, the enquiry officer weighs the evidence based on preponderance of probabilities while in criminal trial the same is beyond reasonable doubt. It is further submitted that in course of the said domestic enquiry as well as before the appellate authority and the revisional authority principle of natural justice has been duly followed. It is further submitted that in absence of any material irregularity in such proceedings and/or for consideration of any extraneous materials which are relevant there cannot be any justification to allow the instant writ petition by granting reliefs to the writ petitioner. In support of her contention, Ms. Pandey placed her reliance upon the judgment as passed in ***Airports Authority of India vs. Pradip Kumar Banerjee*** reported in ***(2025) 4 SCC 111***.

8. We have meticulously perused the entire materials as placed before us. We have given our due consideration over the submissions of the learned Advocates for the contending parties. In order to reach at a logical conclusion of the *lis*, we at the very outset propose to look to Rule 3 of Railway Services (Conduct) Rules, 1966 ("Rules" in short) and the same is reproduced hereinbelow in verbatim:

> "**3. General.** -- *(1) Every railway servant shall at all times-*
> *(i) maintain absolute integrity;*
> *(ii) maintain devotion to duty;*
> *(iii) do nothing which is unbecoming of a railway servant;*

(iv)…………
(v)…………..
(vi)…………
(vii)…………
(viii)……….
(ix)…………
(x)……………
(xi)…………..
(xii)…………
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(xvii)……….
(xviii)……….
(xix)…………
(xx)…………..
(xxi)…………"

9. Since the writ petitioner was charged for violation of Rule 3(1) (i), (ii) and (iii) of the said Rules, we also propose to look to the charge and statement of imputation of charge as framed against the writ petitioner/ original applicant as available at page no. 64 of the instant writ petition and those are also reproduced hereinbelow in verbatim:

> *"Annexure- I*
>
> *Article of charges for framed against Sri A.K. Paul, Sr. TNC/NH.*
>
> *Sri A.K. Paul, Sr. TNC/NH while on duty on 09.2.91 misdespatched and diverted Wagon No. WR/BKC-72124 loaded with 18 bdls. CR sheet by false recording false entry ……. illegible…… the O/A E/L handbook "B" as Ex. Nh to SIWAN on line No. 11/OR against its original booked destination Ex. NH to GRP with mala fide and fraudulent intention which left Railway Admn. To face a fraudulent delivery on forged RR.*

The above activities of Sri A.K. Paul, Sr. TNC/Nh exposes his malicious policy and fraudulent intention to defraud the administration which tantamounts to gross negligence to duty and as such Sri Paul acted in a manner of unbecoming a Railway servant which contravened Rule 3/1 (i), (ii) & (iii) of Railway Service (Conduct) Rules, 1966.

Annexure-II

Statement of imputation of charges framed against Sri A.K. Paul Sr. TNC/Nh.

Wagon No. WR/BKC- 72124 loaded with 18 Bdls. CR sheets booked under Inv. No. 7/RR 737470 dt. 17.1.91 Ex.NH to GKP despatched from NH/Goods on 05.2.91 by Dn CP/PJ at 19/30 hrs. under correct entry NH to GKP which arrived at NH/Yard on 06.2.91 at 0.25 hrs. This has been correctly recorded in Rail Inward "B" handbook maintained by Sri A.B. Harijan TNC on L/No. 6/NR.

On 09.2.91 the said loaded Wagon No. ERBKC 72124 was misdespatched/ diverted by E3403/NA under or false recorded entry in O/W handbook "B" cum guidance prepared by Sri A.K. Paul, Sr. TNC/Nh on Line No. 11/OR as Ex.Nh to SIWAN resulting to allow fraudulent delivery on forged RR at SIWAN. A misdespatched Wire No. TI/7/91 dt. 11.2.91 after two days of the wagon passed."

10. On careful perusal of the aforementioned charge vis-à-vis the statement of imputation of charge as framed against the writ petitioner/ original applicant, it would reveal that it is the specific case of the respondents authorities that the delinquent while on duty on 09.02.1991 with mala fide and fraudulent intention, misdirected and diverted the wagon no. WR/BKC 72124 Ex.Naihati to Siwan by changing its original destination Ex.Naihati to Gorakhpur (GRP). It further appears from the said charge and the statement of imputation of charge that it is also the case of the respondents authorities that

the delinquent with the fraudulent intention to defraud the respondents authorities falsely recorded entry in OW handbook thereby allowed fraudulent delivery on forged RR at Siwan.According to the respondents authorities, such malicious and fraudulent act on the part of the delinquent tantamount to gross negligence to duty and thus, violation of Rule 3(1) (i), (ii) and (iii) has/have been caused resulting initiation of the enquiry proceeding.

11. At this juncture, if we look to the judgment as passed in Criminal Appeal No. 108 of 2007 as has been annexed with the supplementary affidavit as filed by the writ petitioner and as has been affirmed on 20.08.2024, it would reveal that in the criminal appeal arising out of Siwan Railways P.S. Case no. 16 of 1991 dated 19.04.1991 under Section 419/420/471/467/468 IPC, the said appellate Court while setting aside the conviction of the appellant (writ petitioner/ original applicant herein) from the charges under Section 420/408/468/471/120B, IPC noticed that in the criminal trial the allegation against the writ petitioner/ original applicant was that in outgoing register he made entry 'Siwan' in place of 'Gorakhpur' and thus diverted the wagon no. 72124 carrying the relevant consignment to Siwan to facilitate the delivery of the consignment in question to the co-accused persons. While appreciating the evidence as recorded by the trial Court, the said appellate Court in the said criminal appeal however noticed that the prosecution has miserably failed to prove the charge of criminal conspiracy as punishable under Section 120B, IPC. The said appellate Court also found that the accused Asim Kumar Paul is not guilty of the offence under Section 420/468/471/408 IPC since while

appreciating the evidence of the PWs and the DWs as recorded in the criminal trial, it was found by the said appellate Court that outgoing and incoming entries in the relevant register was made on the basis of card label fixed in the pocket of the wagon. The said appellate Court also found in the evidence of prosecution that as to who had changed the label and/or when such label was changed could not be detected and thus, the said appellate Court came to a finding that the accused Asim Kumar Paul cannot be made scapegoat only because he made entry in the outgoing register. This Court in the foregoing paragraphs of the judgment has already recorded that Section 420 IPC is the penal provision of the offence of cheating within the meaning of Section 417 IPC. Section 468 IPC deals with the penal provision for forgery for the purpose of cheating while Section 471 IPC deals with the penal provision of using as genuine a forged document and Section 408 deals with criminal breach of trust by clerk or servant and in all such sections elements of fraud are there. We have also noticed that the charges under the aforementioned Sections were framed in the said criminal trial on account of alleged fraudulent acts of the accused/writ petitioner/ original applicant who according to the respondents authorities misdirected the relevant wagon containing the relevant consignment to Siwan instead of Gorakhpur.

12. It thus appears to us that the charges, the evidence, the witnesses and the circumstances in both the departmental enquiry and the criminal proceeding are identical or substantially similar. At his juncture, the moot question arises for our consideration is as to whether on account of such

similarity, the finding of the enquiry authority, appellate authority, revisional authority as well as of the Tribunal in the impugned judgment can be allowed to be sustained following the acquittal of the writ petitioner/ original applicant in criminal appeal. At this juncture, if we look to the reported decision of ***MaharanaPratap Singh (Supra)***, we find that the Hon'ble Supreme Court while deciding the said Civil Appeal framed four numbers of issues as reveals from paragraph no. 25 of the said reported decision. For better understanding we propose to quote paragraph 25 of the reported decision of ***MaharanaPratap Singh (Supra)***in verbatim and the same is reproduced hereinbelow:

> *"**25.** The issues for determination that emerge for decision are:*
> *(i) Whether due process was followed in dismissing theappellant from service and whether his dismissal from serviceis justified, on facts and in the circumstances, that haveunfolded before us?*
> *(ii) Whether, in light of the facts, evidence, witnesses, andcircumstances of the case, the charges in the criminalproceedings are substantially identical to those in thedepartmental proceedings, such that an acquittal in thecriminal case would render the findings in the disciplinaryproceedings vulnerable?*
> *(iii) Whether the impugned judgment, which allowed the appealof the respondents and dismissed the writ petition of theappellant, deserves to be upheld?*
> *(iv) Whether the appellant is entitled to any relief, should theaforesaid questions be answered in his favour?"*

13. While deciding the issue no. (ii) the Hon'ble Supreme Court in ***MaharanaPratap Singh (Supra)*** expressed the following view:

> *"**46.** The aforesaid discussion on the first issue seals the fate of therespondents. However, since arguments were*

advanced in respect of thisissue too, we propose to briefly answer the same.

47. *While an acquittal in a criminal case does not automatically entitle theaccused to have an order of setting aside of his dismissal from publicservice following disciplinary proceedings, it is well-established that when the charges, evidence, witnesses, and circumstances in both the departmental inquiry and the criminal proceedings are identical or substantially similar, the situation assumes a different context. In such cases, upholding the findings in the disciplinary proceedings would be unjust, unfair, and oppressive. This is a position settled by the decisionin* ***G. M. Tank*** *(supra)****[AIR 2006 SC 2129]****, since reinforced by a decision of recent origin in****Ram Lal v. State of Rajasthan [(2024) 1 SCC 175]****.*

48. *To assess the degree of similarity between the charges, evidence,witnesses, and circumstances in the disciplinary and criminalproceedings, it is indeed crucial to review the materials placed before the Court where such an issue arises. However, we regret, absence ofthe departmental file has disabled us from looking into the same.*

49. *Notwithstanding the above, a plain reading of the materials available onrecord only reveals that charge no.1 in the disciplinary closely resembledthe allegations in the criminal proceedings. In fact, the disciplinaryproceedings were initiated based on the written complaint of theinformant.*

50. *The judgment acquitting the appellant reveals that the prosecution"miserably failed to prove its case beyond reasonable doubt" as both theinformant and PW-2 refused to identify the appellant in court. Thisdiscussion confirms that the appellant's acquittal was based not on meretechnicalities. In* ***Ram Lal*** *(supra), this Court held that terms like"benefit of doubt" or "honourably acquitted" should not be treated asformalities. The Court's duty is to focus on the substance of thejudgment, rather than the terminology used.*

51. *That apart, it is noteworthy that in course of the inquiry PW-2 had alsodeclined to identify the appellant during cross-examination, and theinformant was not called as a witness in the disciplinary proceedings.This sort of*

creates a parallel between the circumstances in both thecriminal and disciplinary proceedings.

52. *Besides, the appellant's case is strengthened by the principle of adverseinference. It can be reasonably inferred that the respondentsdeliberately withheld the scanned copy of the departmental file, whichwas essential for us to assess whether the charges, witnesses, evidence, and circumstances in both the criminal and departmental proceedingswere substantially similar or identical, likely due to concerns over thepotential adverse consequences.*

53. *In light of the preceding discussion and the adverse presumption that isavailable to be drawn, we hold that the finding of the appellant beingguilty of charge no.1 cannot be sustained following his acquittal in thecriminal proceedings, which seem to have involved substantially similaror identical charges, evidence, witnesses, and circumstances."*
[Emphasis supplied]

14. Keeping in mind the proposition of law as decided in the case of ***MaharanaPratap Singh (Supra)***, if we look to the factual aspects as involved in the instant writ petition, it appears to us that the charges as framed against the delinquent in the enquiry proceeding are almost similar to the charges as framed in the criminal proceeding and the evidence and the witnesses and the circumstances of both the enquiry proceeding and criminal proceeding are either identical or substantially similar. We have also noticed that apart from the charge of mala fide and fraudulent act of the delinquent thereby attracting contravention of the Rule 3(1) (i), (ii) and (iii) of the said Rule, no other independent charge was framed in the said disciplinary proceeding alleging culpable negligence on the part of the writ petitioner in discharging his duty. It thus appears to us that on account of passing of the judgment of acquittal in the aforementioned criminal appeal the findings of the enquiry authority,

appellate authority as well as the revisional authority cannot be allowed to stand.

15. We have also noticed that the impugned judgment of the Tribunal was passed on 24.07.2009 while the learned Additional Sessions Judge- V Sarat at Chapra allowed the Criminal Appeal no. 108 of 2007 as filed by the writ petitioner/ original applicant by its judgment dated 25.06.2019 and thus, there was no scope on the part of the said Tribunal to assess the impact of passing of the judgment of acquittal in Criminal Appeal no. 108 of 2007 in favour of the writ petitioner/ original applicantbefore it.

16. It is pertinent to mention herein that the reported decision of ***Airports Authority of India (Supra)*** is distinguishable from the facts and circumstances of the instant writ petition inasmuch as in the said reported decision there was no occasion on the part of the Hon'ble Supreme Court to consider the impact of passing of a judgment of acquittal in a criminal trial where charges, witnesses, evidence and circumstances are substantially similar.

17. In view of the discussion made hereinabove, we thus find sufficient merit in the instant writ petition. Consequently the punishment dated 20.08.2002 as has been imposed by the disciplinary authority, the finding of the appellate authority dated 15.07.2003 and the punishment dated 30.09.2003 awarded by it, the finding of the revisional authority dated 19.03.2004 and the impugned order dated 24.07.2009 as passed by the said Tribunal are hereby quashed and set aside.

18. Admittedly, the writ petitioner has crossed his age of superannuation in the year of 2014. At this juncture, it is required to be determined as to what benefits the writ petitioner is entitled to on account of allowing of this writ petition. Admittedly, after passing of the order of removal from service on 30.09.2003 by the appellate authority the writ petitioner was out of service. In that event, a question arises as to whether on account of allowing the instant writ petition, the writ petitioner is at all entitled to the back wages that is on and from 30.09.2003 till the date of his actual retirement in the year 2014.

19. On careful perusal of the copy of the application as filed before the Tribunal as well as in the instant writ petition, we found that no prayer has been made by the writ petitioner for grant of back wages. In course of his argument learned Advocate appearing on behalf of the writ petitioner did not make any such submission. The law relating to grant of back wages where termination is found to be illegal has been dealt with by the Hon'ble Supreme Court time and again.In doing so it has been held that in absence of any evidence to prove that the appellant was unemployed during the period in question, back wages cannot be granted to him since he had not worked for that period. In the case of ***Mulin Sharma vs. State of Assam***reported in ***(2016) 14 SCC 208***the Hon'ble Supreme Court while dealing with the principle of grant of back wages expressed the following view:

> *"**14.** We are fully satisfied that in the facts and circumstances of the case, back wages should not have been awarded to the appellant herein. In several cases, this Court has held that payment of back wages is a discretionary power which has to be exercised by a court*

keeping in view the facts in their entirety and neither straitjacket formula can be evolved nor a rule of universal application can be laid down in such cases. Thus, reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate court.

15. *In C.N. Malla v. State of J&K [C.N. Malla v. State of J&K, (2009) 9 SCC 597 : (2009) 2 SCC (L&S) 715] , this Court has held as under: (SCC p. 600, para 11)*

"11. The legal position is fairly settled by a catena of decisions that direction to pay back wages in its entirety is not automatic consequent upon declaration of dismissal order bad in law. The concept of discretion is inbuilt in such exercise. The court is required to exercise discretion reasonably and judiciously keeping in view the facts and circumstances of the case. Each case, of course, would depend on its own facts."

16. *In view of the foregoing discussion, we are of the considered opinion that the concurrent finding of the courts below that the appellant herein is not entitled to back wages in the absence of any material on record that he remained unemployed during the entire period from 23-5-1998 to 16-8-1999 is correct. Even the learned counsel for the appellant herein has admitted before this Court that he was not allowed to perform his duties after obtaining his signature on 22-5-1998."*

20. Similar view was taken by the Hon'ble Supreme Court in the case of ***DeepaliGunduSurwase vs. Kranti Junior AdhyapakMahavidyalaya (D.Ed.) & Ors.***reported in ***(2013) 10 SCC 324*** wherein following has been held:

> *"**38.1.** In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
>
> ***38.2.** The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
>
> ***38.3.** <u>Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages.</u> If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."*
>
> *[Emphasis Supplied]*

21. Similar such view was taken by a Division Bench of the High Court of Telengana at Hyderabad in its judgment dated 10.09.2024 in ***WP no. 7517 of 2018 [P.V. Suryanarayana vs. The High Court of Judicature for the State of Telengana&Ors.]*** presided over by one of us (Sujoy Paul, J.).

22. In view of the discussion made hereinabove, we thus findno reason to pass an order for payment of back wages to the writ petitioner in absence of any pleading to the effect he was not gainfully employed after removal and in absence of any proof that during the period from 30.09.2003 till the date of his actual retirement in the year 2014 he remained unemployed. However, on account of allowing the instant writ petition we direct the respondents authorities to disburse all retiraldues to the writ petitioner on notional basis as if he retired on his actual day of superannuation and such disbursement shall have to be made positively within sixty working days from the date of communication of the server copy of this judgement.

23. Before parting with the matter, we record our appreciation for the able assistance provided by both the sides in general and by Mr. Debottam Das, learned counsel of legal aid in particular.

24. With the aforementioned observation the instant writ petition is allowed to the extent indicated hereinabove.

25. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, C.J.)

(PARTHA SARATHI SEN, J.)