HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No.19740 OF 2003

Between:

1. Kollipara Koteswara Rao (died)

2. K. Padmavathi and others .....Petitioners

AND

The Inspector General of Registration
and Stamps, A.P., and others..

.....Respondents

DATE OF JUDGMENT PRONOUNCED: **18**.08.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE DR. JUSTICE K. MANMADHA RAO

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

DR. K. MANMADHA RAO, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
&
THE HON'BLE DR. JUSTICE K. MANMADHA RAO

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And
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.....Respondents

! Counsel for the Petitioner: Sri P.S.P. Suresh Kumar

^ Counsel for the respondents : Government Pleader for Services-I

< Gist :

> Head Note:

? Cases Referred:

[1] (2015) 2 SCC 365
[2] (2000) 3 SCC 450
[3] 2023 SCC OnLine SC 621
[4] 2023 SCC OnLine SC 56
[5] (2013) 1 SCC 598
[6] (2018) 1 SCC 797
[7] (2013) 7 SCC 685
[8] AIR 1964 SC 787
[9]. (2022) 1 SCC
[10]. (2016)8 SCC 471

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE DR. JUSTICE K. MANMADHA RAO

WRIT PETITION No.19740 OF 2003

JUDGMENT:(per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri P.S.P. Suresh Kumar, learned counsel for the petitioners and the learned Government Pleader for Services-I for the respondents.

2. This writ petition has been filed under Article 226 of the Constitution of India by the petitioner K. Koteswara Rao challenging the judgment of the Andhra Pradesh Administrative Tribunal (Tribunal) at Hyderabad passed on 28.10.2002 in O.A.No.3240 of 2001 which was dismissed by the Tribunal as devoid of merits.

3. During pendency of the writ petition, the original petitioner (Petitioner No.1) having died was substituted by the petitioners 2 to 5.

4. The petitioner No.1 was appointed as an attender in the office of the District Registrar, Krishna District at Machilipatnam-3rd respondent and was later on promoted to the post of Junior Assistant vide proceedings dated 03.07.1992. He

joined on 04.07.1992. The Controller of the examinations vide letter dated 27.10.1992 informed the District Registrar that the Matriculation Original Passed Certificate (Certificate) submitted by the 1st petitioner to obtain promotion to the post of Junior Assistant was not genuine. The 2nd respondent-the Deputy Inspector General of Registration and Stamps decided to initiate the departmental enquiry vide proceedings dated 11.12.1992 and the 3rd respondent was authorised to conduct a regular enquiry. The petitioner No.1 was placed under suspension by order dated 14.12.1992. The 3rd respondent submitted a report dated 06.02.1994 that the 1st petitioner was guilty of filing false Matriculation Certificate. The 2nd respondent imposed the penalty of reduction of his pay to a minimum in the time scale of the post of an attender. The 1st respondent, Inspector General of Registration and Stamps kept the order of penalty in abeyance vide memo dated 03.08.1994 and issued the show cause notice to the 1st petitioner proposing to enhance the punishment; calling upon him to submit the explanation to which the 1st petitioner submitted explanation dated 18.08.1994. Later on vide order dated 23.09.1994 the punishment of removal from service with immediate effect, was imposed on 1st petitioner. Against the same he submitted a

representation to the Government of Andhra Pradesh, on 22.11.1994.

5. Besides the departmental proceedings, the respondents 1 to 3 also initiated the criminal proceedings in C.C.No.103 of 1993 on the file of the learned II Additional Judicial Magistrate of the First class, Machilipatnam. In the said criminal case, the learned Magistrate convicted the 1st petitioner and imposed a punishment of rigorous imprisonment for a period of six months and also a fine of Rs.500/- vide judgment dated 30.03.1999. The 1st petitioner preferred an appeal being Criminal Appeal No.75 of 1995 in which the learned Additional Junior Civil Judge, Krishna at Machilipatnam exonerated the 1st petitioner from the charges and acquitted by setting aside the judgment of the Magistrate, vide judgment dated 25.09.1995.

6. The 1st petitioner submitted a representation dated 15.07.1998, in view of his acquittal, before the 1st respondent for his reinstatement to the appropriate post, upon which remarks were called which were submitted by the 1st respondent on 23.12.1998 but inspite of many representations, final decision was not taken.

7. The 1st petitioner filed O.A.No.3240 of 2001 before the A.P. Administrative Tribunal to set aside the proceedings dated 23.09.1994. Pending the O.A proceedings, the petitioner's representation dated 15.07.1998 was rejected by the Government on 31.12.1999.

8. The Tribunal dismissed the O.A by judgment dated 28.10.2002, which is impugned in the present writ petition.

9. Learned counsel for the petitioner raised the following submissions:

(i) The order of penalty of stoppage of increments could not be enhanced to 'removal' by exercising the revisional power taking recourse to the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (in short, "APCCA Rules, 1991").

ii) After the 1st petitioner was acquitted by the criminal court in appeal, the order of punishment of removal ought to have been set aside and the petitioner No.1 was entitled for reinstatement.

iii) the punishment of removal from service is highly disproportionate to the charge.

10. Learned counsel for the petitioners placed reliance in **S. Bhaskar Reddy and another vs. Superintendent of Police**

and another[1] and in **U.P. State Road transport Corporation and others vs. Mahesh Kumar Mishra and others**[2]**,**

11. Learned Government Pleader raised the following submissions:

i) that the revisional authority has the power to enhance the penalty, even suo motu, under Rule 40 of the APCCA Rules 1991 by giving reasonable opportunity to the Government servant of submitting representation. He submitted that the show cause notice dated 03.08.1994 was issued to the petitioner No.1 to which he filed representation. So the order of removal is passed within jurisdiction and by following the prescribed procedure.

ii) that the acquittal of the 1st petitioner, would not result in exoneration of the charges proved in the departmental proceedings. The acquittal in criminal case is not hon'ble acquittal.

iii) the charge in the departmental proceedings is of grave nature. The 1st petitioner submitted a forged

[1] (2015) 2 SCC 365
[2] (2000) 3 SCC 450

Matriculation Certificate and succeeded in getting promotion on the post of Junior Assistant. The order of removal cannot be said to be disproportionate but commensurate to the proved charge.

12. Learned Government Pleader placed reliance in the cases of **Aurelliance Fernandes vs. State of Goa and others**[3] and **Union of India and others vs. Const. Sunil Kumar[4].**

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

14. The following points arise for our consideration:

i) Whether the penalty of stoppage of increments imposed could be enhanced to removal in exercise of the revisional power under APCCA Rules, 1991?

ii) Whether based on the petitioner's acquittal in Criminal Appeal, the order of punishment of removal required to be set aside and the petitioner entitled for reinstatement?

iii) Whether the punishment of removal from service is shockingly disproportionate to the charge?

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[3] 2023 SCC OnLine SC 621
[4] 2023 SCC OnLine SC 56

Consideration of Point –(i):

15. Rule 40 of the Rules, 1991 provides as under:

"[**40. Revision:** - (1) Notwithstanding anything contained in these rules

(i) the Government, or

(ii) in the case of a Government servant serving in a depart. office under the control of a head of department such head of the directly under the Government; or

(iii) any appellate authority, or

(iv) any other authority specified in this behalf by the Government by a general or special order and within such time as may be prescribed in such general or special order, may where a revision petition is preferred by the Government servant within one year of the date of receipt by him of the order sought to be revised, and in cases where no such revision petition is preferred within four years of the date of the order proposed to be revised, either *suo motu* or otherwise and after calling for the records of any inquiry and examination, revise and order of penalty made under these rules or under the rules repealed by Rule 45, after consultation with Commission where such consultation is necessary. The said authority may exercise the power *suo motu* within four years from the date of issue of order of penalty by the competent authority or within one year of the date of receipt of the petition either confirm or reduce or set aside the order of penalty or any other order already issued, and where it is proposed to enhance the penalty, such authority may exercise the power within four years from the date of receipt of the petition and revise any order made under Rule 45 after consultation with the Commission where such consultation is necessary, and

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit :

Provided that the Special Inspector General of Police (Law and Order) or the Deputy Inspector General of Police or an officer of the corresponding rank may, of his own motion or otherwise, revise an order passed on appeal by the authority subordinate to him;
Provided further that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the major penalties specified in Rule 9 or to enhance the minor penalty imposed by the order sought to be revised to any of the major penalties and if an inquiry under Rule 20 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 20, subject to the provisions of Rule 25 and except after consultation with the Commission, where such consultation is necessary:
Provided also that subject to the provisions of Rule 25, the revising authority shall:

(a) where the enhanced penalty which the revising authority propose to impose, is the one specified in clause (iv) of Rule 9 and falls within the scope of the provisions contained in sub-rule (2) of the Rule 22; and

(b) where an inquiry in the manner laid down in Rule 20 has not already been held in the case.

Itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 20, and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit;
Provided further that no power of revision shall be exercised by the head of department, unless

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for revision shall be initiated or commenced until after

(i) the expiry of the period of limitation for preferring an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred; the Government Servant may however prefer a revision petition for revising the order or penalty within a period of one year after the appeal petition to the prescribed appellate authority is disposed off.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.]"

16. In view of the Rule position, the Inspector General of Registration and Stamps had the jurisdiction to confirm,

reduce, enhance or set aside the penalty imposed, in the exercise of revision jurisdiction either on an application or even sou motu. The only condition, before such enhancement is that, no order imposing or enhancing any penalty shall be made by any revisional authority unless the government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed.

17. In the present case, the penalty of removal was enhanced by the competent revisional authority, after giving the opportunity to show cause vide show cause notice dated 03.08.1994 to which the petitioner submitted the explanation dated 18.08.1994. Consequently, we do not find any illegality with the impugned order, on this ground.

Consideration of Point No.(ii)

18. So far as the next submission of the learned counsel for the petitioners based on acquittal in the criminal case is concerned the 1st petitioner was convicted and sentenced by the trial court for RI for 6 months and also a fine of Rs.500/- was imposed. On perusal of the appellate judgment, we find that the charge against the 1st petitioner was that he was liable for punishment for the charges under Sections 468 and 471 IPC.

The learned Magistrate found that the accused-1st petitioner was not guilty for the offence under Section 468 IPC but found him guilty for the offence under Section 471 IPC.

19. The appellate court observed that there was difference between forged document and fake document. The forged document means that it is not actually issued by the officer concerned and it was prepared somewhere else by forging the signature of authorities. Fake document means the signature on the document may be genuine but the contents might have been altered or forged or filled up. The appellate court observed that without investigation, if the document, was forged or a fake document the offence could not be established. According to the appellate court, the prosecution had to prove that the Exs.P.2 and P.3 were forged documents. The prosecution must prove first that Ex.P.2 and P.3 were not issued by Andhra University; that those were not signed by the officers of Andhra University i.e., that the signatures on Ex.P.2 and P.3 were not put by authorised person. But, the prosecution failed to investigate how the accused, P.1 came into possession of those documents. In the view of the appellate court, the prosecution miserably failed to bring home the guilt of the accused beyond

all reasonable doubt. The appellant/1st petitioner, was acquitted for the offence under Section 471 IPC, as well, in the appeal.

20. A perusal of the criminal appeal judgment however shows that the appellate court has also recorded that the accused failed in the examination held in April, 1981, as per the records of the University (Register No.2906).

21. In **S. Bhaskar Reddy** (supra), upon which the learned counsel for the petitioner placed much reliance to contend that when the charges in the departmental enquiry and the criminal proceedings are similar and the delinquent employee having faced the criminal trial and honourably acquitted, it would be unjust, unfair and rather oppressive to allow the findings recorded at the departmental proceedings to stand.

22. We my refer to pras 21 to 24 of **S. Bhaskar Reddy** (supra) as under:

> 21. It is an undisputed fact that the charges in the criminal case and the Disciplinary proceedings conducted against the appellants by the first respondent are similar. The appellants have faced the criminal trial before the Sessions Judge, Chittoor on the charge of murder and other offences of IPC and SC/ST (POA) Act. Our attention was drawn to the said judgment which is produced at Exh. P-7, to evidence the fact that the charges in both the proceedings

of the criminal case and the Disciplinary proceeding are similar. From perusal of the charge sheet issued in the disciplinary proceedings and the enquiry report submitted by the Enquiry Officer and the judgment in the criminal case, it is clear that they are almost similar and one and the same. In the criminal trial, the appellants have been acquitted honourably for want of evidence on record. The trial judge has categorically recorded the finding of fact on proper appreciation and evaluation of evidence on record and held that the charges framed in the criminal case are not proved against the appellants and therefore they have been honourably acquitted for the offences punishable under 3 (1) (x) of SC/ST (POA) Act and under Sections 307 and 302 read with Section 34 of the IPC. The law declared by this Court with regard to honourable acquittal of an accused for criminal offences means that they are acquitted for want of evidence to prove the charges.

22. The meaning of the expression "honourable acquittal" was discussed by this Court in detail in the case of Deputy Inspector General of Police & Anr. v. S. Samuthiram[3], the relevant para from the said case reads as under :-

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is

meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

(Emphasis laid by this Court) After examining the principles laid down in the above said case, the same was reiterated by this Court in a recent decision in the case of Joginder Singh v. Union Territory of Chandigarh & Ors. in Civil Appeal No. 2325 Of 2009 (decided on November 11, 2014.

23. Further, in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr. (supra) this Court has held as under:-

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles there from". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is

acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

(emphasis laid by this Court) Further, in the case of G.M. Tank v. State of Gujarat and Ors.(supra) this Court held as under:-

"20.....Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of the PC Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent court on the same set of facts, evidence and witness and, therefore, the dismissal order based on the same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.

30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law.....It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him

during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of [pic]difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply.

We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

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> against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.
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23. In **S. Bhaskar Reddy** (supra), it was held that the honourable acquittal of an accused for criminal offence means that they are acquitted for want of evidence to prove the charges. The case of **Deputy Inspector General of Police and another vs. S. Samuthiram[5],** was referred in which it was held that mere acquittal does not entitle an employee to reinstatement in service. The acquittal has to be honourable. It was held that the expressions "honourable acquittal", "acquitted

[5] (2013) 1 SCC 598

of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

24. In **Union Territory, Chandigarh Administration and others vs. Pradeep Kumar and another[6],** the Hon'ble Apex Court, held that the acquittal in a criminal case is not conclusive of the suitability of the candidates in the concerned post. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the acquittal. In the context, what is honourable acquittal, the Hon'ble Apex Court also referred to the judgment of **Inspector General of Police** (supra).

25. In **Pradeep Kumar** (supra), the Hon'ble Apex Court also referred to the judgment in **Commr. Of Police v. Mehar**

[6] (2018) 1 SCC 797

Singh[7]**,** in which it was held that while the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full fledged trial, where there is no indication of the witnesses being won over. It also referred to **R.P. Kapur v. Union of India**[8] **in** which it was held that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

26. Paras 10 and 11 of **Pradeep Kumar** (supra) are as under:

> "10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the concerned post. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in Deputy Inspector General of Police and Another v. S. Samuthiram (2013) 1 SCC 598, in which this Court held as under:-

[7] (2013) 7 SCC 685

[8] AIR 1964 SC 787

> "24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

11. Entering into the police service required a candidate to be of good character, integrity and clean antecedents. In Commissioner of Police, New Delhi and Another v. Mehar Singh (2013) 7 SCC 685, the respondent was acquitted based on the compromise. This Court held that even though acquittal was based on compromise, it is still open to the Screening Committee to examine the suitability of the candidate and take a decision. Emphasizing upon the importance of character and integrity required for joining police force/discipline force, in Mehar Singh case, this Court held as under:-

> "23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force."

27. Recently, in **Union of India and others vs. Methu Meda[9],** the law with regard to the effect and consequence of the acquittal, concealment of criminal case on appointments etc. was again considered. The Hon'ble Apex Court held that it has

[9] (2022) 1 SCC

been settled in the case of **Avtar Singh vs. Union of India and others**[10].

28. We refer Paras 16, 20 and 21 of **Methu Meda** (supra) as under:

> 16. The law with regard to the effect and consequence of the acquittal, concealment of criminal case on appointments etc. has been settled in the case of Avtar Singh (supra), wherein a three - Judge Bench of this Court decided, as thus:
>
> "38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarize our conclusion thus:
>
> "38.1 Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.
>
> 38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.
>
> 38.3. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision. 38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted :
>
> 38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.
>
> 38.4.2 Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee. 38.4.3 If acquittal had already been

[10] (2016)8 SCC 471

recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a 3 case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a 4 person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form. 38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or 5 submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

29. In **Methu Meda** (supra), the Hon'ble Apex Court held that the employer is having right to consider the nature of the

acquittal or decide until he is completely exonerated. If a person is acquitted giving him the benefit of doubt from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment. It is apt to refer paras 20 and 21 as under:

> "20. In view of the aforesaid, it is clear the respondent who wishes to join the police force must be a person of utmost rectitude and have impeccable character and integrity. A person having a criminal antecedents would not be fit in this category. **The employer is having right to consider the nature of acquittal or decide until he is completely exonerated** because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee and the decision of the Committee would be final unless mala fide. In the case of Pradeep Kumar (supra), this Court has taken the same view, as reiterated in the case of Mehar Singh (supra). The same view has again been reiterated by this Court in the case of Raj Kumar (supra).
>
> 21. As discussed hereinabove, **the law is well settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee.** The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate. Both the Single Bench and the Division Bench of the High Court have not considered the said legal position, as discussed above in the

> orders impugned. Therefore, the impugned orders passed by the learned Single Judge of the High Court in Writ Petition No. 3897 of 2013 and Division Bench in Writ Appeal No. 1090 of 2013 are not sustainable in law, as discussed hereinabove."

30. Thus, the law is well settled that the acquittal is to be honourable and honourable acquittal is when the accused is acquitted after full consideration of prosecution evidence and the prosecution having miserably failed to prove the charge.

31. In the present case, the trial court convicted and sentenced the petitioner for offence under Section 471 IPC. The appellate court acquitted, holding that the prosecution failed to prove the charge beyond reasonable doubt. The acquittal was for the view taken that there is difference between a fraudulent and fake document and if it is not proved, whether the document was fake or fraudulent, offence under Section 471, was not established. The appellate court has not held that the document was a genuine document. On the contrary the record of University produced in the criminal proceedings demonstrated that the petitioner failed in matriculation. We are of the considered view, that in such circumstances, the acquittal of the petitioner is on the technical ground. In the absence of the document having been proved as fraudulent or fake it was held that the prosecution did not prove the charge

beyond reasonable doubt. Such an acquittal, in our view, would not be a clean acquittal or an honourable acquittal.

32. In the departmental enquiry, the Matriculation Certificate was found to be a forged document. On verification of the certificate from the Andhra University, it was reported to be a forged document. It is undisputed that based on such document of Matriculation Certificate, the 1st petitioner got the promotion. The fraud was played on the department, for securing the promotion, which promotion was also secured. It is not the 1st petitioner's case that he had passed the Matriculation and acquired the qualification. He has also not controverted the report on verification submitted to the department. On the contrary, he filed mercy petition.

33. The Tribunal also considered that the 1st petitioner in his explanation dated 22.11.1994 to the Secretary to the Government, Revenue Department pleaded mercy that he may be excused for submission of the false Matriculation Certificate, which amounted to his admission about filing a forged certificate. Not only this he was the only person to derive the benefit of a false Matriculation Certificate, which he obtained by succeeding in getting promotion to the post of Junior Assistant

because of such certificate. He was the beneficiary of the fraud committed.

34. The document Matriculation Certificate might not have been proved as forged in the sense as understood by the appellate court, under the criminal law, for attracting Section 471 IPC. But, still in the absence of any case of the 1st petitioner that infact he had passed the Matriculation examination and possessed Matriculation Qualification, the finding in the departmental enquiry on the point of the Matriculation Certificate, cannot be faulted. It was based on material, report of verification of Andhra University. At the cost of repetition even in the criminal case, the record of the Andhra University, showed that, the 1st petitioner/accused had failed in Matriculation examination.

35. So far as the departmental proceedings are concerned, it is settled in law that the charges are proved on preponderance of probabilities. Such distinction, if a document is fraudulent or fake, in our view, is not relevant for the purpose of proving the charge in the departmental proceedings. If the document is not genuine and is false, and on such document some service benefit is acquired to which such employee was not otherwise entitled, mere proof of the document being false and not

genuine would be sufficient. The standard of proof in disciplinary proceedings is not beyond reasonable doubt as in criminal case. The petitioner did not have the qualification of matriculation and was not eligible for promotion, but based on such matriculation certificate, he obtained promotion. Consequently, we are of the considered view that the acquittal in criminal appeal of the petitioner, in view of the finding recorded in the departmental proceedings on preponderance of evidence, shall have no effect on the order of punishment in departmental proceedings.

Consideration of Point No.(iii):

36. Learned counsel for the petitioners submitted that the order of punishment of removal is disproportionate to the charge proved and deserves interference in the exercise of the power of judicial review in the writ jurisdiction.

37. In **Mahesh Kumar Mishra** (supra)**,** upon which learned counsel for the petitioners placed much reliance in support of above contention; it was held by the Hon'ble Apex Court that the High Court can interfere with the punishment inflicted upon the delinquent employee if, that penalty, shocks the conscience of the Court. It was further held, that the law, therefore, is not,

that the High Court can, in no circumstance, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings.

38. The Hon'ble Apex Court in **Mahesh Kumar Mishra** (supra) also referred to its judgment in the case of **Colour-Chem Ltd. v. Alaspurkar and Others**, [1998] 3 SCC 192, in which it was held that if the punishment imposed is shockingly disproportionate to the charges held proved against the employee, it will be open to the Court to interfere.

39. Paragraphs 8 and 9 of **Mahesh Kumar Mishra** (supra) are reproduced as under:

> "8. This will show that not only this Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee if, that penalty, shocks the conscience of the Court. The law, therefore, is not, as contended by the learned counsel for the appellants that the High Court can, in no circumstance, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings.
>
> 9. Another Three-Judge Bench of this Court in Colour-Chem Ltd. v. Alaspurkar and Others, [1998] 3 SCC 192, has also laid down the same proposition and held that if the punishment imposed is shockingly disproportionate to the charges held

> proved against the employee, it will be open to the Court to interfere."

40. There is no dispute on the position in law that the High Court in the exercise of the power of judicial review can interfere with the quantum of punishment and it is not that in no circumstances the imposition of punishment by disciplinary authority cannot be interfered. But, such interference can be only in extreme cases where on the face of it interference is called for, considering the punishment to be shockingly disproportionate to the charges held proved and not in a routine manner with every punishment imposed in the disciplinary proceedings.

41. In **Const. Sunil Kumar** (supra), the Hon'ble Apex Court held that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate, but should be strikingly disproportionate. It is only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Article 226 or 227 or under Article 32 of the Constitution.

42. It is apt to refer para 17 of **Const.Sunil Kumar** (supra) as under:

> 17. Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In the case of Surinder Kumar (supra) while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in the case of **Union of India Vs. R.K. Sharma; (2001) 9 SCC 592 that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Article 226 or 227 or under Article 32 of the Constitution."**

43. Considering the gravity of the charge proved, based on the material in the departmental enquiry, the order of punishment of removal is not disproportionate, much less shockingly disproportionate. It does not touch our conscious, as the production of false/fake certificate and acquiring promotion there upon, is a serious misconduct.

44. In **Aurellano Fernandes** (supra), reliance placed by the learned Government Pleader, the Hon'ble Apex Court held that to provide a sense of security of tenure to Government servants, the Framers of the Constitution have incorporated safeguards in respect of the punishment or dismissal of removal or reduction in their rank as provided for in Clauses (1) and (2) of Article 311. At the same time, being mindful of the very same public interest and public good which does not permit that Government servants found to be corrupt, dishonest or inefficient be continued in service, a remedy is provided under the second proviso to Clause (2) of Article 311 whereunder their services can be dispensed with, without conducting a disciplinary inquiry.

45. There cannot be any dispute on the above said proposition. The law is very well settled. However, here the penalty has been imposed after conducting a disciplinary enquiry and so it is not a case of 'without conducting a disciplinary enquiry'.

46. To sum up:

i). On point No.(i), we hold that the enhancement of the penalty by the revisional authority was within jurisdiction and by following the prescribed procedure.

ii). On point No.(ii), we hold that the 1st petitioner's acquittal in criminal appeal by the appellate court cannot be termed as an honourable acquittal and on that ground the punishment of removal deserves no interference.

(iii) On point No.(iii), we hold that considering the nature of the charge proved, the punishment of removal from service is not shockingly disproportionate. The punishment as imposed calls for no interference in the exercise of power of judicial review.

47. We do not find any illegality in the order of removal. Consequently, there is no illegality in the order of the Tribunal in not setting aside the punishment of removal.

48. The writ petition is devoid of merits and is accordingly dismissed. No order as to costs.

Consequently, the miscellaneous petitions, if any, pending in the petition shall stand closed.

RAVI NATH TILHARI, J

DR. K. MANMADHA RAO, J

Date:18.08.2023

Note:

LR copy to be marked.

B/o.

Gk

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE DR. JUSTICE K. MANMADHA RAO

WRIT PETITION No.19740 OF 2003

Date: 18.08.2023

Gk