

**IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH**

DATED THIS THE 26<sup>TH</sup> DAY OF SEPTEMBER 2019

PRESENT

**THE HON'BLE MR.JUSTICE S.N. SATYANARAYANA**

AND

**THE HON'BLE MR.JUSTICE P.G.M. PATIL**

**WP No.104315/2018 (S-KAT)**

BETWEEN

S.N. MURKLOTI S/O. LATE NARAYANA  
AGED ABOUT 51 YEARS,  
GANDHI NAGAR,  
MARUTHI ROAD,  
BELAGAVI, TQ & DIST:BELAGAVI.

... APPELLANT

(BY SRI.F.V.PATIL, ADV.)

AND

1. THE COMMANDANT,  
SECOND REGIMENT,  
KARNATAKA STATE RESERVE POLICE,  
BELAGAVI,  
TQ & DIST:BELAGAVI.
2. THE DEPUTY INSPECTOR,  
GENERAL OF POLICE,  
OFFICE OF THE DIRECTOR GENERAL &  
INSPECTOR GENERAL POLICE,

KARNATAKA STATE RESERVE POLICE,  
BENGALURU-560001.

... RESPONDENTS

(BY SMT. VEENA HEGDE, AGA)

RESERVED FOR ORDERS ON: 17.9.2019.

ORDER PRONOUNCED ON : 26.9.2019.

THIS WRIT PETITION FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 4/11/2003 PASSED BY THE RESPONDENT NO.1 VIDE ANNEXURE-E ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **P.G.M.PATIL, J**, MADE THE FOLLOWING:

**ORDER**

This writ petition is directed against the order dated 30/10/2017 passed by the Karnataka State Administrative Tribunal (for short 'KSAT') in application No.2960/2005-Annexure-J by which an application was dismissed.

2. The brief facts of the case are as below:-

The petitioner joined the service as a Police Constable in Karnataka State Reserve Police (KSRP) on 3/5/1993 and served in the Department till 2003.

3. In the month of October 2001, the petitioner was implicated in a criminal case by the Belagavi Rural Police in Crime No.78/2001 for the offences punishable under Sections 307, 109, 120B r/w Section 34 of IPC and Sections 3, 25(1)(b)(a), 28 and 29 of the Indian Arms Act. He was arrested and then released on bail.

4. According to the petitioner, on the basis of the criminal case registered against him, he was placed under suspension and Departmental Enquiry was also held against him. After lapse of about 7 months from the date of suspension, the petitioner was served with article of charges dated 20/7/2002 against which he filed reply. However, his reply was not accepted and enquiry officer was appointed and departmental enquiry was held against him. The Enquiry Authority concluded

the enquiry and submitted a report to the Disciplinary Authority holding him guilty of the misconduct. Thereafter, show cause notice was issued to him on which he submitted his representation to drop the charges. However, first respondent being Disciplinary Authority passed an order dated 4/11/2003-vide Annexure-E imposing the punishment of removing him from the service and treated period from 16/10/2001 to 10/2/2003 as period of suspension. It is the further case of the petitioner that he filed an appeal before the second respondent impugning the order dated 4/11/2003.

5. Petitioner has further stated that second respondent mechanically dismissed his appeal by order dated Nil March 2004 vide Annexure-G. The said order was subject matter before the KSAT in application No.2960/2005. The petitioner has further stated that he was acquitted in the Sessions Case No.126/2003 by

judgment dated 30/4/2005 and the same was brought to the notice of the Tribunal. However, the KSAT without considering the same, dismissed his appeal which he has impugned in the present writ petition. The petitioner has sought for issue of writ of certiorari quashing the Annexures-E, G and J.

6. We have heard the learned counsel for the petitioner and the learned Additional Government Advocate for the respondents.

7. It is not in dispute that the petitioner was appointed as police constable in KSRP on 3/5/1993. It is also not disputed that the petitioner was one of the accused in the criminal case registered by Belagavi Rural Police in Crime No.78/2001 for the offences punishable under Sections 307, 109, 120B r/w 34 of IPC and the provisions of Indian Arms Act.

8. The learned counsel for the petitioner would submit that respondent No.1 initiated disciplinary proceedings against the petitioner mainly on the ground that the petitioner was involved in the said criminal case and that subsequently, the petitioner has been honorably acquitted in the criminal case. Therefore, departmental enquiry purely based on the charges in the criminal case should have been dropped and the disciplinary authority should have exonerated the petitioner from the charges. The learned counsel further submitted that the Appellate authority and the KSAT ought to have considered that the petitioner was honorably acquitted in the criminal case and therefore, the disciplinary proceedings initiated against the petitioner would not survive.

9. Per contra, the learned Additional Government Advocate submitted that the charges in the criminal case against the petitioner and the articles of charges

imputed in the disciplinary proceedings are all together different and therefore, only on the basis of the petitioner being acquitted in the criminal case, the disciplinary proceedings cannot be dropped and that the order of acquittal in the criminal case cannot be considered to hold that the misconduct is not proved.

10. The learned counsel for the petitioner relying on the judgment in the case of **G.M.Tank Vs. State of Gujarat and others** reported in **(2006) 5 SCC 446** submitted that where the charges in the departmental enquiry and the charges in the criminal case are one and the same and in case he was acquitted in the criminal case and there is no evidence against the employee to hold him guilty and where the acquittal in the criminal case was during the pendency of the proceedings challenging the dismissal, continuing the departmental proceedings in such a case is held unjust, unfair and oppressive.

11. Similarly, learned counsel for the petitioner has relied on the judgment in the case of **Joginder Sing Vs. Union Territory of Chandigarh and others** reported in **(2015) 2 SCC 377** where in the above said principle is reiterated. It has been held that where the charges involved in the criminal case and disciplinary enquiry are identical and where the employee has been acquitted in the criminal case, the departmental enquiry need not be continued.

12. Per contra, the learned Additional Government pleader has relied on the judgment of the Apex Court in the case of **Shashi Bushan Prasad Vs. Inspector General, Central Industrial Security Force and Others** in **Civil Appeal No.7130/2009** decided by the Hon'ble Apex Court on 1/8/2019. The facts in the said case are identical with the facts in the present case. In that case also, the petitioner served as constable in Central Industrial Security Force and criminal case was

instituted against him for the offence punishable under Section 25(1)(a) of the Arms Act. He was arrested for the said offence. It was further alleged that the petitioner therein had provided a country made revolver to one Subash Chandra Agarwalla, who murdered his aunt with it. At the same time, for gross misconduct being committed by the petitioner in discharge of his duties, the disciplinary proceedings were also initiated against him by serving a Memorandum along with the charge sheet. After holding the disciplinary inquiry, the petitioner therein was held guilty of the charges against him and was inflicted with a penalty of dismissal from service. It is also seen that the petitioner therein was acquitted in the Sessions case as the material witnesses stood hostile. The petitioner challenged his dismissal by the disciplinary authority before the Appellate authority, which was dismissed. Revision was also dismissed. Thereafter, the writ petition was filed before the Hon'ble High Court

invoking Articles 226 and 227 of the Constitution of India and the High Court after examining the facts and circumstances of the case dismissed the writ petition.

The Hon'ble Apex Court in para Nos.21 and 22 of the judgment has held as follows:-

*“21. It may not be assistance to the appellant in the instant case for the reason that the charge leveled against the appellant in the criminal case and departmental proceedings of which detailed reference has been made were on different sets of facts and evidence having no nexus/co-relationship. The kind of criminal act/delinquency which he had committed in discharge of his duties in the course of employment. That apart, much before the judgment of the criminal case could be pronounced, the departmental enquiry was concluded and after the Inquiry Officer had held him guilty, he was punished with the penalty of dismissal from service.*

*22. The judgment in **G.M. Tank case**(supra) on which the learned counsel for the appellant has placed reliance was a case where this Court had proceeded on the premise that the charges in the criminal case and departmental enquiry are grounded upon the same sets of facts and*

*evidence. This may not be of any assistance to the appellant as we have observed that in the instant case the charge in the criminal case and departmental enquiry were different having no nexus/co-relationship based on different sets of facts and evidence which has been independently enquired in the disciplinary proceedings and in a criminal trial and acquittal in the criminal proceedings would not absolve the appellant from the liability under the disciplinary proceedings instituted against him in which he had been held guilty and in sequel thereto punished with the penalty of dismissal from service.”*

13. The Hon'ble Apex Court has considered the judgment in the case of **G.M.Tank Vs. State of Gujarat and others** and **Joginder Sing Vs. Union Territory of Chandigarh and others** stated supra.

14. Applying the principles stated in the said case to the facts in the case on hand, it becomes crystal clear that the articles of charges served on the petitioner in the departmental enquiry are all together different from the charges against the petitioner in the criminal case.

It is necessary to observe that the petitioner was serving as police constable in KSRP, the department known for discipline. The charges against the petitioner in the disciplinary proceedings was that he being a responsible police official belonging to the department known for discipline, conspired with other accused persons in Crime No.78/2001 of Belgaum Rural Police Station, wherein he supplied country made pistol to accused No.1 with which accused no.1 in that case attempted to commit the murder of one Sanjay Suntankar. Petitioner was arrayed as accused No.5 in SC No.126/2003 in which he was acquitted by the judgment dated 30/4/2005. Therefore, the charges in the criminal case and the imputation of charge in the disciplinary proceedings cannot be held as one and the same so as to hold that on the basis of the acquittal in the criminal case, the departmental enquiry and proceedings have to be set aside. It is further necessary to observe that the petitioner was acquitted in S.C.No.126/2003 by the

judgment dated 30/4/2005. By that time, the disciplinary proceedings against the petitioner were concluded and penalty of dismissal from service was passed by order dated 4/11/2003 and the said order was confirmed by the Appellate Authority on dated Nil March 2004. Thereafter, the petitioner approached the Karnataka State Administrative Tribunal in application No.2960/2005. Therefore, it is seen that by the time the petitioner was acquitted in the criminal case, the penalty of dismissal from service was already imposed and same was confirmed by the Appellate authority.

15. Under these circumstances, the petitioner cannot seek benefit of acquittal in the present case so as to quash the order passed by the Disciplinary Authority. The Hon'ble Apex Court in the case of **G.M.Tank Vs. State of Gujarat and others**, has held that where the employee was acquitted in the criminal case pending departmental enquiry and the criminal proceedings

were initiated on the same set of facts, charges, evidence and witnesses, the order of dismissal passed after departmental enquiry is liable to be set aside. Admittedly, in the present case, much earlier to the date of judgment of acquittal of the petitioner in S.C. No.126/2003 on 30/4/2005, the departmental enquiry was concluded and penalty of dismissal was passed by the Disciplinary Authority on 4/11/2003 and the same was confirmed by the Appellate Authority in March 2004.

16. The KSAT has properly appreciated the material on record and held that the disciplinary authority has assigned the reasons while imposing the penalty and the Appellate Authority has also considered the ground of appeal and has given reasons while dismissing the appeal. It is further observed that the judgment of the Hon'ble Supreme Court relied on by the applicant are

not on the same set of facts and therefore, no grounds are made out for quashing the impugned orders.

17. Under these circumstances, we are of the considered opinion that there are no grounds to interfere with the impugned order passed by the KSAT in application No.2960/2005. Therefore, the petition being devoid of merits is liable to be dismissed. Accordingly, it is dismissed.

**SD/-  
JUDGE**

**SD/-  
JUDGE**

Vmb