IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JANUARY, 2024

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PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

WRIT PETITION NO. 9642 OF 2020 (S-KSAT)

BETWEEN:

P V RUDRAPPA,

...PETITIONER

(BY SRI. RANGANATHA S JOIS.,ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   REP BY ITS SECRETARY,
   DEPARTMENT OF RURAL DEVELOPMENT AND
   PANCHAYAT RAJ,
   M S BUILDING, BANGALORE-560 001.

2. THE LOKAYUKTHA,
   REP BY ITS REGISTRAR,
   M S BUILDING, BANGALORE-560 001.

...RESPONDENTS

(BY SRI.KHAMROZ KHAN, AGA FOR R1;
SRI. VENKATESH ARABATTI., ADVOCATE FOR R2)

THIS WRIT PETITION FILED UNDER ARTICLES 226 AN 227 OF THE COSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS RELATING OT THE ORDER DT 10.02.2020 MADE IN A.NO.3668/2019 PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL VIDE ANNEXURE-A, PERUSE AND QUASH THE SAID ORDER OF THE TRIBUNAL AS ARBITRARY, WITHOUT APPLICATION OF MIND, ILLEGAL AND CONTRARY TO LAW AND ALLOW THE APPLICATION FILED BY PETITIONER BEFORE THE HONBLE KSAT IN A.NO.3668/2019ISSUE DIRECTION TO THE RESPONDENT TO FORTHWITH REINSTATE THE PETITIONER INTO SERVICE AND TO TREAT HIM AS HAVING CONTINUED IN SERVICE WITH ALL CONSEQUENTIAL MONETARY BENEFITS TILL THE DATE OF HIS RETIREMENT AND THEREAFTER GRANT PENSIONARY BENEFITS WITH INTEREST AT 12 PER CENT PER ANNUM.

THIS WRIT PETITION, COMING ON FOR HEARING THIS DAY, **KRISHNA S. DIXIT. J.,** MADE THE FOLLOWING:

ORDER

Petitioner an employee dismissed on the ground of proven act of bribery, is knocking at the doors of Writ Court for assailing the Karnataka State Administrative Tribunal's order dated 10.02.2020 whereby his Application No.3668/2019 has been dismissed. In the said Application,

petitioner had challenged the Penalty Order of Dismissal from service dated 24.05.2019.

II. Learned counsel for the Petitioner argues that his client has been acquitted after a full-fledged trial and the said acquittal is honourable; in the earlier round of litigation, i.e., in Petitioner's Application No.1864/2017 the very Tribunal had directed the Respondent No.1 to consider the Criminal Court order of acquittal along with his Reply to the 2nd Show Cause Notice; such consideration has not taken place and that, had it taken place, the Petitioner would have emerged victorious in the Disciplinary Proceedings. He further submits that there is thus a gross error apparent on the face of the record warranting interference of this Court for setting the same at naught and thereby doing justice to the Petitioner.

III. After service of notice, the State is represented by learned AGA and the Lokayukta speaks through its Panel Counsel. Both they vehemently resist the Petition contending that: criminal trial and Disciplinary Proceedings

are different from each other; what happens in the former has nothing to do with what should happen in the latter; acquittal in criminal trial is not a bar against holding Disciplinary Enquiry; the Disciplinary Authority having considered all aspects of the matter accepted the Enquiry Report that found the Petitioner guilty of charges and then has levied the penalty of dismissal from service; the matter having been examined by the Tribunal, relief has been rightly denied to him. A Writ Court exercising a limited supervisory jurisdiction cannot undertake a deeper examination of impugned orders. Therefore, they submit, Petition should be dismissed on settled principles.

IV. We have heard learned counsel for the parties and perused the Petition papers that are bulky. Having done that, we are of a considered view that this Petition deserves to be allowed and relief needs to be granted to the Petitioner, for the following reasons:

1. AS TO NON-CONSIDERATION OF ACQUITTAL ORDER WHILST LEVYING PUNISHMENT:

(a) The specific charge against the Petitioner both in the criminal case i.e., Spl Case (LOK) No. 3/2012 and the Disciplinary Proceedings, was verbatim same namely, that whilst working as the Panchayat Development Officer, he had demanded & accepted a bribe of Rs.4,000/- on 08.07.2011 from the complainant Mr.Chandrappa for changing the Katha in respect of a house site. After a full-fledged trial, the learned Special Judge (Lokayukta), Davanagere, handed an acquittal order on 30.01.2017. The Tribunal in its order dated 08.08.2018 in Petitioner's Application No.1864/2017 having quashed Order dated 25.02.2017 had directed the Respondent No.1 to consider the matter afresh in the light of Acquittal Order and the reply filed by him.

(b) An extreme punishment of dismissal from service is levied on the petitioner. Job being the only source of livelihood, the Disciplinary Authority ought to have shown due seriousness in treating the matter. However, that is not done. Except referring to the Acquittal Order, there is

absolutely no discussion by the first Respondent, in the impugned order of penalty. Referring to an order is one thing and discussing about it, to arrive at a decision is another. More often than not, the *authorities that be, labour* under a wrong impression that the reference *per se* is tantamount to discussion. We do not subscribe to this militantly wrong view. Had the Acquittal Order been duly adverted to, the outcome of Disciplinary Proceedings would have been much different and to the advantage of the delinquent employee. Thus, its non-consideration despite Tribunal's mandate, constitutes the first error apparent on the face of the record.

2. AS TO DIFFERENCE BETWEEN CRIMINAL PROCEEDINGS & DISCIPLINARY PROCEEDINGS, AND INVOCABILITY OF DOCTRINE OF DOUBLE JEOPARDY:

(a) The vehement submission of learned AGA & learned Panel Counsel that there is difference between Criminal Proceedings and Disciplinary Proceedings, cannot be disputed. Even an average law student would not disagree with this. The nature of criminal proceedings, the

form before which they are brought, the quality & quantum of evidence, degree of proof and the outcome of such proceedings, are all much different from those in a Disciplinary Proceeding. The rule of evidence applicable to Departmental Proceedings is not the same for criminal trial; criminal cases are ordinarily governed *inter alia* by the provisions of the Indian Evidence Act, 1872 & the Criminal Procedure Code, 1973. The technical rule relating to sufficiency of evidence does not apply to departmental enquiries. The authority conducting such enquiry is guided by the Rules of Natural Justice & Fairness. In a departmental enquiry, there is no inhibition against placing reliance on the evidence of a co-delinquent, unlike in a criminal case. This is the reason why courts ordinarily do not stay the disciplinary proceedings only on the ground that a parallel criminal proceeding pends.

(b) What is observed by the Apex Court in AJIT KUMAR NAG vs. INDIAN OIL CORPORATION LTD., 2005 SCC Online SC 1352 at para 11 is worth reproducing:

"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 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 offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with 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 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".*

However, the above observations are by way of general rule which admits at least one exception namely the abnorm of honourable acquittal.

(c) In ***RAM LAL v. STATE OF RAJASTHAN, (2024) 1 SCC 175,*** it is observed at para 30 as under:

> "*We are additionally satisfied that in the teeth of the finding of the Appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive."*

In other words, when the facts, evidentiary material and the circumstances arising from the criminal case are identical to those in the disciplinary proceedings, ordinarily there cannot be difference in terms of their outcome. If on identical set of facts/allegations that are vouched by the very same evidentiary material/witnesses, an accused

employee is acquitted after a full-fledged trial, ordinarily he cannot be punished in a disciplinary enquiry. In a way, this can be likened to *doctrine of double jeopardy*, constitutionally enacted in Article 20(2); the Apex Court in a catena of decisions has applied the same even in disciplinary proceedings eg., STATE OF HARYANA vs. BALWANT SINGH, (2003) 3 SCC 362. This vital aspect has not figured in the consideration of petitioner's case at the hands of disciplinary authority. Alas, Tribunal too missed it. This constitutes yet another lacuna in the impugned orders.

3. AS TO PLEA OF HONOURABLE ACQUITTAL & ITS EFFECT ON DISCIPLINARY ACTION:

(a) As a norm offences are tried in the Criminal Courts. After the trial, Court may convict or acquit the accused. Even at the pre-trial stage, an accused may be discharged too. There may be quashment of criminal cases by the Apex Court/High Court. An order of acquittal generally means that the person has not committed the offence for which he was charged and tried; the cloud on

his presumed innocence thus stands removed. Acquittal is recorded when prosecution fails to prove its case beyond all reasonable doubt; that is, *when the guilt is not proved to the hilt*. The benefit of doubt given to the accused does not mean that he was involved in the case, but the same could not be established by the prosecution. In Criminal Jurisprudence, the term "beyond reasonable doubt" employed in a judgement ordinarily does not imply stigma qua the one who was accused. However, that is not the end of matter when the accused being a delinquent employee is facing a disciplinary proceeding on the same allegations. That is where the plea of '*honourable acquittal'*, factors.

(b) The concept of '*honourable acquittal'* is easy to say, but difficult to employ, there being no statutory definition thereof, more particularly in the IPC, Cr.PC & Indian Evidence Act. Lord Williams, J. in ROBERT STUART WAUCHOPE vs. EMPEROR (1934) 61 ILR Cal.168 observed: "*The expression 'honourably acquitted' is one which is*

unknown to court of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals…". The Apex Court in COMMISSIONER OF POLICE, NEW DELHI v MEHER SINGH, (2013) 7 SCC 68 at para 25 explained the same:

> *"…the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". … when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted."*

(c) The idea of '*honourable acquittal'* is not easy to define although it can be illustrated. If an accused is discharged at pre-trial stage or the criminal proceeding launched against him is quashed, there is no difficulty in treating the same as the cases of '*honourable acquittal'* for the limited purpose of disciplinary enquiry. *(We are mindful that the question of acquittal comes post trial)*. A case of 'honourable acquittal' may arise when, after trial

the Criminal Court orders acquittal with any of nearly the following illustrives:

(i) the accused is falsely prosecuted to seek vengeance or for some ulterior motive.

(ii) that there is absolutely no evidence to implicate the accused in the proceedings;

(iii) there is very little evidence which is insufficient to connect the accused with the commission of crime;

(iv) the prosecution has miserably failed to prove the charges against the accused;

(v) the prosecution witnesses are unworthy of any credit and their version does not generate any confidence.

We again say that the above are only illustrative and not exhaustive. We would also add a caveat that in considering as to whether the case of delinquent is of '*honourable acquittal'*, the entire judgement in Criminal Case should be perused. It is also desirable to secure a copy of record of the proceedings for examination, unless the said exercise poses practical difficulty. At least, it should be open to the delinquent employee to produce such copies.

4. AS TO THE ROLE OF ENQUIRY OFFICER IN DISCIPLINARY PROCEEDINGS:

(a) Now let us examine the findings of Criminal Court in its acquittal order dated 30.01.2017; at para 34, it has observed as under:

> *"… the evidence of Investigating Officer and P.W.2 also clearly depict that this accused never demanded for the bribe amount of Rs.4,000/- and on the other hand, this complainant himself repeatedly stated with regard to the amount of Rs.4,000/-. He has further admitted that the accused specially informed to the complainant by stating that "ನೀನು ಹೋಗು, ನಿನ್ ಕೆಲ್ಸಕ್ಕ ಹೋಗು, ನಾನು ಕಳ್ಸಿ ಕೊಡ್ತಿನಿ, ದುಡ್ಡುಪಡ್ದು ಏನು ಬ್ಯಾಡ ಹೋಗು ಖಾತೆ ಆಗಿತೆ ಹೋಗು. So, all these things clearly create a doubt in the mind of the Court regarding the demand made by this accused for bribe. Admittedly, this accused demanded the complainant to pay the tax (KANDAAYA), for that the complainant paid that amount and the accused has issued two receipts…"*

With the above finding amongst other, the Criminal court acquitted the Petitioner. True it is, the judgement in so many words does not say that it is a case of *honourable acquittal.* However, merely on that ground, one cannot hastily conclude that Petitioner has no case on the doctrine of *honourable acquittal*. A bare perusal of the acquittal order strengthens his case for the quashment of dismissal from service, the khata of property having been

admittedly transferred a day before the alleged bribe amount was handed to him and the pink test proved positive.

(b) The counsel for the petitioner is right in pointing out that Mr.Chandrappa who had lodged complaint before the Lokayukta Police was examined as PW1 on behalf of prosecution on 06.07.2013. In the cross-examination, he specifically admitted that the petitioner told him about the transfer of khata having already been done a day before, there was no need of any payment and that he could go. However, in the disciplinary enquiry on 20.11.2014, he had deposed as PW1 in variance of the same. In all fairness he ought to have revealed in the enquiry as to what he had deposed before the Criminal Court. Similarly, the Investigating Officer Mr.Nagaraja Madahalli was examined as PW9 in the criminal case long before he deposed as PW3 in the disciplinary enquiry. As a public servant, at least he ought to have disclosed to the Enquiry Officer as to what Mr. Chandrappa had admitted in the

then on-going criminal trial. Even he did not do it, either. Fair play is flouted and petitioner is victimized.

(c) Section 165 of the Indian Evidence Act, 1872 enables the Judge, in order to discover or to obtain proper proof of relevant facts, put any question he pleases, in any form, at any time, to any witness or parties, about any fact relevant or irrelevant and he may order the production of any document. As of necessity, such power, may be in a lesser extent, needs to be conceded to those who conduct departmental enquiries. The Enquiry Officer cannot be a mute spectator in the disciplinary proceedings; he has a passive role, if not active, in ascertaining the truth and for that purpose he can put any questions to any party or witnesses. His role is not of an Umpire in a sports event. Otherwise, a departmental proceeding would be a *game of chance*, if not of dice. The Enquiry Officer ought to have asked the complainant ie., PW1 & the Investigating Officer i.e., PW3 as to what was their stand on record in the subject criminal trial.

But he did not undertake this exercise. This court has been observing in cases coming before it that more often than not, departmental enquiries are conducted by untrained Enquiry Officers who do not have minimum expertise in the matters and that puts the stake holders at risk. It hardly needs to be stated that the persons conducting enquiries should be competent, fair & impartial. A crash course of training in matters like this would be of great advantage to all the stake holders. It assumes more importance inasmuch as ordinarily the Conduct Rules do not permit delinquents to engage the services of lawyers/ legally trained minds, though charges are grave and consequences are disastrous. This sounds strange, but that is how it is. The material lapse on the part of Enquiry Officer in the case at hand has resulted into masking of the truth to the prejudice of the petitioner.

5. NEED FOR PROTECTION OF HONEST EMPLOYEES FROM MISCHIEF MONGERS:

(a) Ours is a Welfare State, the days of East India Company having long gone by. The Constitution provides

for protection of *inter alia* the Executive which obviously would include civil servants like the Petitioner. On being appointed, the transition happens from *contract* to *status*. The conditions of service of public servants are regulated by Conduct Rules, with various nomenclatures. Persons in public employment are not slaves of the Government, nor of their higher ups in the *echelon* of administration. All they discharge public duties, with no fear nor favour. Protection of honest officials augurs well for public administration needs no deliberation. It gives a sense of security to them in discharging their duties, diligently.

(b) The Government or the higher ups in the hierarchy need to take all steps in protecting the honest officials and penalizing proven delinquency. They should be mindful of mischief mongers, who for ulterior motives, at times launch false cases of corruption/bribery. The purpose of enacting Secs.196 & 197 in the Code of Criminal Procedure, 1973 (corresponding provisions existed even in Macaulay's Code) or the like provisions, is

to achieve this object. '*Good faith clauses*' do obtain in all civilized jurisdictions. This statutory object if ignored, honest officials scrupulously discharging their public duties run the risk of false implication in criminal cases and/or disciplinary proceedings. This would affect the morale of the office staff. However, it is not that there are no black sheep in the system. They are a class apart for a '*differential treatme*nt'. More is not necessary to specify.

6. AS TO THE OBJECT OF JUDICIAL & QUASI-JUDICIAL PROCEEDINGS:

(a) The ultimate object of judicial/quasi-judicial proceedings, is to find out the truth/fact, and on that basis, do justice to the parties, of course, in accordance with law. In KPTCL vs. C.NAGARAJU (2020) 1 SCC (L&S) 92 at para 13, it is observed:

> *"…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…"*

It hardly needs to be stated that a disciplinary enquiry is a quasi-judicial proceeding and an Enquiry Officer is a quasi-judicial authority vide UNION OF INDIA vs. PRAKASH

KUMAR TANDON, (2009) 2 SCC 541 para 15. At times, a departmental proceeding partakes the character of quasi-criminal proceedings too, depending upon its complexity and the enormity of outcome. For example, a penalty of dismissal from service may prove disastrous to the family of delinquent employee. Therefore, matters like this merit a deeper consideration. Ours is not a court of appeal; our focal point is the decision making process and not the decision itself. We are advertent to all this. Writ Courts' duty to find out the truth and do justice to the parties, cannot be hijacked by assuming limitations of technicalities. *In* ***DAVIS vs. MILLS, 194 U.S. 451 (1904)*** *Justice Oliver Wendell Homes, had forewarned:*

> *"Constitutions are intended to preserve practical and substantial rights, not to maintain theories…"*

(b) The Committee on Reforms of Criminal Justice System headed by a great Judge of yester decades namely late Justice V.S.Malimath, in it's Report of March 2003, under caption 'TRUTH AND JUSTICE' has stated as under:

> *"Truth does not pay homage to any society ancient or modern. But society has to pay homage to truth or perish" Swami Vivekananda. The Indian ethos accords the highest importance to truth. The motto Satyameva Jayate (Truth alone succeeds) is inscribed in our National Emblem "Ashoka Sthamba". Our epics extol the virtue of truth… For the common man truth and justice are synonymous. So when truth fails, justice fails…".*

Added, what is observed in MARIA MARGARIDA SEQUEIRA FERNANDES vs. ERASMO JACK DE SEQUEIRA, (2012) 5 SCC 370 at para 43 assumes significance:

> " *'Satyameva Jayate' (literally "truth stands invincible") is a mantra from the ancient scripture Mundaka Upanishad. Upon Independence of India, it was adopted as the national motto of India. It is inscribed in Devnagri script at the base of the national emblem. The meaning of the full mantra is as follows: "Truth alone triumphs; not falsehood. Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of truth resides".*

Therefore, the Enquiry Officer, Disciplinary Authority & Appellate Authority at the department level, are all required to keep the above in mind. They should never try to somehow hold the delinquent official guilty, by hook or crook. The rules of reason & justice should triumph. This

ideal approach is lacking, we notice, in matters of the kind. Cases of mindless sacking of employees nowadays galore. Proportionality in penalty is rarely seen. We say this with a lot of penury at heart. Petitioner was a victim, we repeat. Strangely, justice eluded him even at the level of Service Law Tribunal. This happened when there is absolutely no material to *prima facie* substantiate the allegations of demand & acceptance of bribe for doing the public duty.

(c) The vehement contention of learned AGA and the Lokayukta Panel Counsel that notwithstanding what the complainant as a witness had deposed in the Criminal Case should be ignored and what subsequently, he had said in the departmental inquiry, should alone be given credit, is difficult to countenance. Reasons are not far to seek: The charge leveled against him in both the proceedings was verbatim same; they were structured on the basis of same set of facts, witnesses and evidentiary material. As already mentioned above, the Tribunal itself

in order dated 8.8.2018 had directed the consideration of petitioner's case afresh in the light of acquittal order of the Criminal Court. This order was made in his earlier Application No.1864/2017 whereby, the penalty order dated 25.2.2017 was set at naught. At the operative portion, the Tribunal had observed as under:

> "*However, the applicant is permitted to give a copy of the acquittal order dated 30.01.2017 passed by the Principal District & Sessions and Special Judge (Lokayukta) at Davanagere in Special (Lokayuktha) case No.03/2012 to the 1st respondent within one month from today and the 1st respondent is directed to consider the reply of the applicant to the second show cause notice as well as the fact that the applicant has been acquitted in the criminal case and pass a fresh order in accordance with law, within three months thereafter…*"

The said order having attained finality, there is no scope for sustaining contention of the kind that runs counter to its substratum.

7. AS TO WHAT RELIEF PETITIONER IS ENTITILED TO AFTER ADJUSTING EQUITIES:

We are told at the Bar that the petitioner has attained the age of superannuation. He has been out of

employment for long, although for no fault of his. It is he who gave scope for all this. However, the fact remains that whatever be the reason, he has not served the State during the period between dismissal from service and his attaining the age of superannuation. Therefore for this interregnum, he is not entitled to be paid salary on the principle of '*no work, no pay*'. That being said, the subject period needs to be reckoned only for the purpose of fixation of pension & payment of terminal benefits, that have over the years accumulated. Any other relief in variance of this would cause prejudice to the public Exchequer. The competing interests, have thus been equitably adjusted.

In the above circumstances, this petition succeeds with the following directions:

(i) A Writ of Certiorari issues quashing the order of the Tribunal and the penalty order of dismissal from service;

(ii) A Writ of Mandamus issues to the first respondent to determine & pay to the petitioner all his

terminal benefits such as pension, DCRG, etc., within a period of three months.

(iii) Delay, if brooked in complying direction (ii) would entail the State with interest at the rate of 1% per *mensem* on the amount payable to the petitioner; however the same may be recovered by the State from the erring officials personally, in accordance with law.

Costs reluctantly made easy.

Sd/-
JUDGE

Sd/-
JUDGE

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List No.: 1 Sl No.: 44