

*Before G.S. Singhvi, J.*

PREM CHAND BICHAL—*Petitioners*

*versus*

STATE OF HARYANA AND OTHERS—*Respondents*

C.W.P. No. 3139 Of 1986

9th April, 2003

*Constitution of India, 1950—Art. 226—Punjab Civil Services (Punishment and Appeal) Rules, 1952—Charge of misappropriation—Acquittal in criminal case—Department initiating proceedings against delinquent for violation of rules, acting in an irresponsible manner disregarding orders of superiors—Whether departmental proceedings liable to be dropped on acquittal of delinquent—Held, no—Different set of charges in departmental proceedings and not subject matter of criminal case—No justification to quash proceedings of departmental enquiry—Petition liable to be dismissed.*

*Held, that—*

- (i) *A trial for criminal offence and a departmental/ domestic enquiry do not stand on the same footing. The degree of proof required in the departmental proceedings is not the same as it is in a criminal case. In a criminal case the prosecution is required to prove beyond doubt the guilt of a person charged with an offence, unless by some special provision of law the burden of proving innocence is placed on the accused person. But, in a departmental enquiry the charge can be established on the basis of some legally admissible evidence which may not be sufficient for bringing home the charge of a criminal offence.*
- (ii) *The departmental proceedings and criminal trial can be held simultaneously. However, if the departmental proceeding is based on the same set of facts on which the criminal action has already been initiated, it is proper for the employer to await the result of the prosecution.*

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- (iii) Ordinarily, the Court should not stay the proceedings of the departmental enquiry only on the ground of pendency of the criminal case. However, if it is convinced that departmental enquiry and the criminal charge are founded on identical facts and the defence of the accused is likely to be prejudiced, then proceedings of departmental enquiry can be stayed till the conclusion of the trial. Even in such cases, the stay of departmental proceedings can be withdrawn if the criminal trial is unduly prolonged.
- (iv) The departmental proceedings can be continued even after acquittal of the delinquent in the criminal case and the disciplinary authority can pass appropriate order on the basis of evidence produced during the enquiry. While doing so, it may also take into consideration the finding and conclusion recorded by the court of competent jurisdiction.
- (v) If the delinquent is acquitted in the criminal case on merits, the disciplinary authority cannot rely on the same set of evidence for imposing penalty.
- (vi) If the allegations constituting the basis of the departmental enquiry and criminal trial are not identical, the disciplinary authority is not bound by the finding recorded by the court of competent jurisdiction. Similarly, if the evidence produced in the departmental enquiry is different than the evidence produced in the criminal trial then the disciplinary authority can take independent view of the matter and pass appropriate order of punishment.

(Para 22)

H.S. Gill, Senior Advocate with H.S. Rahi, Advocate  
*for the petitioner.*

Jaswant Singh, Senior Deputy Advocate General, Haryana  
*for the respondents.*

## JUDGMENT

*G.S. Singhvi, J.*

(1) Whether the proceedings of departmental enquiry initiated/ pending against an employee are liable to be dropped or can be quashed by the Court only on the ground of his acquittal in the criminal case founded on similar or somewhat similar charge is the question which arises for determination in this petition filed for quashing memorandum dated 21st July, 1979 issued by Superintending Engineer, Loharu Canal Circle, Rohtak (respondent No. 2) for holding departmental enquiry against the petitioner under the Punjab Civil Services (Punishment and Appeal) Rules, 1952 (for short, the Rules), as applicable to the State of Haryana.

(2) The petitioner joined service as Junior Engineer in Irrigation Department of the Government of Haryana. He remained posted in Loharu Feeder Division, Rohtak from 14th March, 1970 to 30th May, 1978. At that time, the charge of stores was with him. In June, 1978, he was transferred to S.Y.L. Division, Kurukshetra. He was relieved on 30th June, 1978 (A.N.) At the time of handing over charge to his successor Shri Raj Singh, he did not physically hand over the charge of slack coal. On physical verification, it was found that there was shortage of slack coal to the tune of 455.56 metric tonnes. Thereupon, the petitioner was called upon for further verification and to explain his position. However, he neither joined the process of verification nor explained the shortage. Therefore, First Information Report No. 626, dated 3rd September, 1980 was got registered against him under Section 409 of the Indian Penal Code. He was tried in the Court of Additional Chief Judicial Magistrate, Rohtak who convicted and sentenced him to undergo rigorous imprisonment for 3 years and to pay fine of Rs. 10,000. On appeal, Additional Sessions Judge (III), Rohtak acquitted him by giving the benefit of doubt. This is clearly borne out from the conclusions recorded by the learned Additional Sessions Judge in paragraphs 7, 8 and 9 of his judgment (Annexure P6) dated 6th July, 1985, the operative part of which reads as under :—

“In view of the above and after taking into consideration the materials brought on the file and also due to the fact that relation between the accused and P.P. Goyal at

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whose instance this case was got registered were strained, I hold that prosecution has failed to prove its case against the accused beyond reasonable doubt. Accordingly, the accused is entitled to the benefit of doubt in this case. Consequently, this appeal succeeds and is accordingly accepted and the conviction and sentence as imposed upon the accused by the learned trial court are both set aside and the accused is acquitted. Fine if paid be returned to the accused/appellant in due course of time.”

(3) In the meanwhile, respondent No. 2 issued memorandum dated 21st July, 1970 for holding an enquiry against the petitioner on the following charges :—

“Shri P.C. Bichhal, J.E. was incharge of stores from 14th August, 1979 to 30th June, 1973 in Loharu Feeder Sub Division No. II, Rohtak. On his transfer to SYL Division, Kurukshetra while handing over charge of the stores to his successor Shri Raj Singh, J.E. during June, 1978 according to Bin Card No. 30, quantity of slack coal viz. 493.54 M.T. was handed over to his successor in papers only and the material was not physically handed over at site. Shri P.C. Bichhal also gave in writing that since the coal was lying scattered, it was not in a measurable position and in case if there is any shortage at a later stage he will be responsible for the same. This writing was also given by Shri P.C. Bichhal, J.E. to his successor Shri Raj Singh J.E. alongiwth the said Bin Card No. 30.

2. On scrutiny of the stock account received through his successor in September, 1978 by the Sub Divisional Officer, Loharu Feeder Sub Division No. II Rohtak it revealed that an indent bearing No. 50/121 dated 7th January, 1978 has been issued for 160 M.T. slack coal where as this quantity of slack coal of 160 M.T. had already been included in the indent No. 6/A dated 19th January, 1977 to M/s Wazir Chand Karam Chand on kiln No. 1 for 598.2 M.T. and the amount received from Sub Divisional Officer, Mohindergar on this account

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(sale of 160 M.T. Slack coal) was also credited to the misc. advances of M/s. Wazir Chand Karam Chand,—vide receipt No. 032/994 dated 23rd February, 1978. In this way Shri P.C. Bichhal, J.E. made duplicate entry of 160 M.T. slack coal showing to have been issued to Sub Divisional Officer, Mohindergarh Canal Division No. V,—vide indent No. 50/121 dated 7th January, 1978 Shri P.C. Bichhal, J.E.,—vide his communication No. 4 dated 15th November, 1978 admitted the mistake committed by him and has stated that 160 M.T. Slack Coal could not be taken by him on stock which had to be taken back from the kiln fictitious and intentional duplicate transaction of 160 M.T. Slack Coal thereby putting the State into loss for this quantity of coal.

3. On this, the Sub-Divisional Officer, Loharu Feeder Sub Division No. II, Rohtak to measure the whole of the quantity of slack coal lying in the store, so as to find out the actual shortage/loss of slack coal. The Sub Divisional Officer, Loharu Feeder Sub-Division No. 1 Rohtak carried out the physical verification in the preence of his successor. Shri Raj Singh, J.E. as Shri P.C. Bichhal did not associate in physical verification despite clear intimation to him by Shri Raj Singh Junior Engineer successor.
4. The report of the Sub Divisional Officer, dated 1st December, 1978 revealed that only 197.98 M.T. Slack Coal was lying against the balance of bin card i.e. 493.54 M.T. slack coal which was exclusive of 160 M.T. slack coal already referred above. Thus the total shortage of slack coal comes to be 455.56 M.T. as per details :  
Slack coal issued in duplicate. 160.00 M.T. Balance  
shortage found at the time physical verification i.e.  
295.56 M.T. 493.54-197.98-----Total 455.56  
M.T.-----

To make certain and to be doubly sure the material was got measured through a committee of two Sub-Divisional Officer's jointly. The result of the joint measurement

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also revealed total shortage of 455.56 M.T. slack coal inclusive of 160 M.T. slack coal.

Sh. P.C. Bichhal was variously requested to attend the office of the Sub Divisional officer, Loharu Feeder Sub Division No. II Rohtak so as to satisfy and explain the shortage but he failed to satisfy. He also failed to associate the joint verification of the material.

He is, therefore, negligent in discharge of his duties and has caused a loss of Rs. 94528.70 to the State on account of shortage of 455.56 M.T. slack coal.”

(4) Subsequently, another charge sheet was issued by respondent No. 2,—vide letter No. 4587-PF-Shortages dated 11th March, 1981 for holding enquiry under Rule 7 of the Rules on the following charges :—

- “1. You Shri Prem Chand Bichhal, Jr. Engineer, did not hand over the charge of slack coal physically to your successor Shri Raj Singh Jr. Engineer although formal entry for handing over and taking over of the charge is shown to have been recorded on the Bin Card No. 50. Instead of physical handing over the charge you gave a slip to your successor. You are thus guilty of violation of rules and acted in an irresponsible manner disregarding the orders of your superiors.
2. You Shri Prem Chand Bichhal, Jr. Engineer, caused wrongful loss of 160 M.T. slack coal by fictitious and intentional duplicate transaction as per entry dated 7th January, 1978 in the Bin Card No. 50.
3. You Shri Prem Chand Bichhal, Jr. Engineer, is responsible for causing shortage of slack coal to the extent of 295.66 M.T. (493.54-197.98) as according to Bin Card No. 50, a balance quantity of coal of 493.54 M.T. only 197.98 M.T. was found on physical verification.
4. You Shri Prem Chand Bichhal, Jr. Engineer, failed to associate for carrying out physical verification and

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despite of promise and undertaking you did not associate and thus intentionally avoided measurements to evade responsibility on one pretext or the other. You, therefore, acted in a very irresponsible and unbecoming of an officer of your responsible status.

(5) The petitioner filed reply and denied the charges. Thereafter,—*vide* order dated 31st August, 1981, respondent No. 2 appointed Shri G.D. Gupta, Executive Engineer, Loharu Canal, Mechanical Division, Rohtak, to conduct enquiry. The petitioner submitted application dated 27th January, 1982 (Annexure P5) to the enquiry officer for staying the proceedings of the departmental enquiry till the conclusion of the criminal case pending against him. The enquiry officer did not accede to his request. He then filed a writ petition (C.W.P. No. 1880 of 1982) for staying the proceedings of departmental enquiry, which was dismissed by the High Court. However, the Special Leave Petition (S.L.P. No. 12008 of 1983) filed by him was entertained by the Supreme Court and the proceedings of enquiry were stayed till conclusion of the trial of the criminal case. The relevant extract of the order dated 26th April, 1983 passed by the Supreme Court reads as under :—

“After hearing learned counsel, we are satisfied that the departmental proceedings against the appellant should remain stayed during the pendency of the criminal proceedings against him. The criminal proceedings shall proceed from day to day until they are concluded. Thereafter, the respondents may pursue the departmental proceedings.”

(Underlining is ours).

(6) After his acquittal in the criminal case, the petitioner submitted representation dated 6th December, 1985 (Annexure P.7) to respondent No. 2 for dropping the proceedings of the enquiry. The latter forwarded his case to the Chief Engineer/JLN (P). Irrigation Department, Haryana with the recommendation that in view of his acquittal by the Appellate Court further proceedings may not be held against the petitioner. It, however, appears that the Chief Engineer did not agree with the recommendations of respondent No. 2 and this is the reason why the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

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(7) The petitioner has averred that in view of the judgment of acquittal passed by Additional Sessions Judge (III), Rohtak, the graveman of the charges levelled against him will be deemed to have been washed off and, therefore, the respondents are not entitled to continue with the departmental enquiry ignoring the findings recorded by the court of competent jurisdiction. He has further averred that charges on which departmental enquiry is being held are founded on the facts which also constituted the basis of the First Information Report and therefore, the proceedings of departmental enquiry cannot be continued in the fact of finding recorded by the Court that the charges have not been proved.

(8) The respondents have taken up the stand that the petitioner's acquittal by the learned Additional Sessions Judge (III), Rohtak does not operate a bar against the continuance of the enquiry because the standard of proof required for imposing a penalty in departmental proceedings is different than the one required for holding a person guilty of criminal offence. They have further averred that the petitioner's acquittal by giving him benefit of doubt cannot be made basis for absolving him of all the charges which are subject-matter of departmental enquiry.

(9) Shri H.S. Gill, Senior Advocate appearing for the petitioner relied on the judgments of the Supreme Court in ***Sulekh Chand and Salek Chand versus Commissioner of Police (1)*** of this Court in ***Dr. Vijay Kumar Sharma versus Chief Secretary and Secretary to Government Punjab, Department of Vigilance and others (2)*** of Rajasthan High Court in ***Mohammad Umar versus Rajasthan State Electricity Board and another (3)***, and of Andhra Pradesh High Court in ***S.K. Ramju versus Regional Manager, APSRTC, Nalgonda (4)***, and argued that in view of his acquittal by the court of competent jurisdiction, the petitioner cannot be punished in the departmental enquiry on the same allegations and, therefore, the proceedings initiated,—vide letter dated 21st July, 1979 may be quashed and the respondents may be restrained from continuing with the same. He further argued that there is no distinction between honourable acquittal and acquittal by giving benefit of doubt and the respondents

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- (1) 1995(4) R.S.J. 233
  - (2) 1996(1) R.S.J. 861
  - (3) 1992(8) S.L.R. 598
  - (4) 2002(1) S.L.R. 462



cannot continue with the proceedings of enquiry ignoring the finding of not guilty recorded by Additional Sessions Judge (III), Rohtak.

(10) Shri Jaswant Singh, Senior Deputy Advocate General, Haryana controverted the arguments of Shri Gill and submitted that the petitioner's acquittal by learned Additional Sessions Judge (III), Rohtak, cannot give him immunity from the departmental action and the competent authority is entitled to take appropriate decision after considering the evidence which may be produced in the course of regular enquiry. He relied on the judgments of the Supreme Court in *Nelson Motis* versus *Union of India and another (5)*, *State of Rajasthan* versus *B.K. Meena and others (6)*, and *Capt. M. Paul Anthony* versus *Bharat Gold Mines Ltd. and another (7)*, and argued that departmental enquiry can be continued and the delinquent employee can be punished even after his acquittal in the criminal case.

(11) I have considered the respective arguments/submissions and carefully perused the record which include the charges contained in memorandums dated 21st July, 1979, 11th March, 1981 and the judgment of learned Additional Sessions Judge (III), Rohtak.

(12) The question whether disciplinary proceedings can be continued after acquittal of the delinquent in the criminal case was directly considered and answered in the affirmative by the Supreme Court in *Nelson Motis* versus *Union of India and another, (supra)*. The facts of that case were that after his acquittal in the criminal case, a disciplinary proceeding was initiated against the appellant on somewhat similar charges. The Enquiry Officer submitted report holding that the charges have been proved. Thereupon, the disciplinary authority ordered his removal from service. He challenged the same before the Central Administrative Tribunal in OA No. 401 of 1987. The Tribunal allowed the application and quashed the order of punishment on the ground that copy of the enquiry report had not been given to him. Thereafter, the disciplinary authority passed an order of deemed suspension. He challenged that order in OA No. 631 of 1989 and pleaded that there was no justification to continue the departmental enquiry in view of his acquittal in the criminal case. The

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(5) J.T. 1992(5) SC 511

(6) JT 1996(8) S.C. 684

(7) JT 1999(2) S.C. 456

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Tribunal dismissed the application. The Supreme Court confirmed the order of the Tribunal and held as under :—

“So far as the first point is concerned, namely whether the disciplinary proceeding could have been continued in the fact of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject-matter of the criminal case.”

(13) In *State of Rajasthan* versus *B.K. Meena (supra)*, the Supreme Court considered the issue whether the departmental proceedings should be stayed during pendency of criminal case on similar charges. After considering the earlier decisions in *Delhi Cloth and General Mills Ltd.* versus *Kushal Bhan (8)*, *Tata Oil Mills Company Limited* versus *Workmen (9)*, *Jang Bahadur Singh* versus *Baij Nath Tiwari (10)*, and *Kusheshwar Dubey* versus *M/s Bharat Coking Coal Limited and others (11)* their lordships of the Supreme Court held that the Court should not stay the proceedings of departmental enquiry only on the ground of pendency of the criminal case unless it is convinced that the allegations which are subject-matter of the departmental enquiry are identical to those constituting criminal offence and serious prejudice is likely to be caused to the delinquent in the criminal case. The Supreme Court also highlighted the need for expeditious conclusion of the departmental proceedings in public interest.

(14) In *Depot Manager, Andhra Pradesh State Road Transport Corporation* versus *Mohd. Yousuf Miyan (12)*, the Supreme Court held that there is no bar to proceedings simultaneously

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(8) 1960(3) SCR 227

(9) 1964 (7) SCR 555

(10) 1969(1) SCR 134

(11) JT 1988 (3) SC 576

(12) AIR 1997 SC 2232

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with the departmental enquiry and trial of a criminal case unless the charge in the criminal case is of a grave nature involving complicated questions of facts and law.

(15) In *M. Paul Anthony* versus *Bharat Gold Mines Ltd.*, (13), the Supreme Court again referred to the cases noted above and deduced the following conclusions :—

- “(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.
- (iv) The facts mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
- (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed, on account of the pendency of the criminal case can be resumed and proceeded with so as to conclude them at an early date, so that if the

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employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.”

(16) In *Sulekh Chand and Salek Chand* versus *Commissioner of Police (supra)*, the Supreme Court held that once the appellant was acquitted on merits in the criminal case launched under the Prevention of Corruption Act, he was entitled to reinstatement as if there is no blot in his service and is entitled to promotion with effect from the date his junior was promoted.

(17) In *V. Srinivas* versus *Superintendent of Police (14)*, a Division Bench of Andhra Pradesh High Court erred to the observations made by the Supreme Court in *M. Paul Anthony versus Bharat Gold Mines Limited (supra)* and rejected the petitioner's plea for quashing the proceedings of departmental enquiry on the ground of his acquittal in the criminal case and observed :—

“It is further well settled that even in a case where the criminal trial ends in acquittal in favour of the delinquent employee, there does not exist any embargo on the part of the disciplinary authority in initiating disciplinary proceedings on the self same charges. As noted herein before, in *M. Paul Anthony's* case (*supra*), the Supreme Court, itself has categorically held that it is possible that a person can be found guilty of commission of misconduct despite his acquittal in the criminal trial. The learned counsel for the petitioner, however, would urge that as in the instant case the criminal trial and the departmental proceedings are based on the same set of facts and evidence adduced before the criminal Court and the disciplinary authorities being the same without any variance, exception to the aforementioned rule would be attracted. The learned counsel, however, could not produce any material whatsoever in support of the aforementioned contention before the Court. Even the judgment of the criminal case has not been produced. The submission of the learned counsel to the effect that despite the fact that the departmental

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proceedings were completed before the conclusion of the criminal trial, but having regard to the fact that the judgment in the criminal case was rendered before any order of punishment was passed against the petitioner, it was obligatory on the part of the disciplinary authority to take the same into consideration, cannot also be accepted keeping in view the decision of the Apex Court in *M. Paul Anthony (supra)*.

(18) In *Mohammed Umar* versus *The Rajasthan State Electricity Board and another (supra)*, I had the occasion to consider the case in which the petitioner was punished in a departmental enquiry on the charge of having committed theft of 800 metres wire, pin-insulators and shakle-insulators despite the fact that the criminal prosecution launched against him on the same charge had resulted in acquittal. In the course of judgment, it was noticed that after his acquittal by Judicial Magistrate, Tonk in Criminal case No. 38 of 1984, the disciplinary authority initiated departmental proceedings against the petitioner on the identical charge and punished him. The order of punishment was quashed on several grounds including the one that in the face of finding recorded by the court of competent jurisdiction, the departmental authority was not entitled to punish the delinquent on the same allegation. Some of the propositions laid down in that case are extracted below :—

“A trial for criminal offence and a departmental/domestic inquiry do not stand on the same footing. The charge of proof required in the departmental proceedings is not the same as it is in a criminal case. In a criminal case, the prosecution is required to prove beyond doubt the guilt of a person charged with an offence, unless by some special provision of law the burden of proving innocence is placed on the person accused of an offence. But in a departmental inquiry the charge can be established on the basis of some legally admissible evidence which may in all case be not sufficient for bring home the charge of a criminal offence. However, in departmental inquiries also, the primary burden lies on the charging authority to lead sufficient evidence

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to prove the allegation. Mere suspicion cannot be made basis for punishing a person in a departmental enquiry.

It is one of the well recognised principle of law that the employer may hold a departmental inquiry in respect of some act of delinquency which can also give rise to prosecution in a court of law. However, if the disciplinary proceeding is based on the same set of facts on which a criminal action has already been initiated, it is always proper for the employer to await the result of the prosecution before a competent court. If the employer proceeds simultaneously with the departmental action during pendency of criminal prosecution, the court may on petition of the employee stay the prosecution once it is satisfied that the two actions are based on the same facts and the same cause. These are the general principles.

When the Legislature has thought it proper to confer finality to the decision of the court of competent jurisdiction in respect of the conviction of an employee on a criminal offence, the court must give full effect to this intention of the legislature while interpreting the relevant provisions of the rules. If the employer can act on the basis of finding of guilt recorded by a court for punishing an employee, converse of it must also be treated as correct. It is therefore logical to hold that the employer cannot ignore the finding of not guilty recorded by a court and proceed with the disciplinary action on the basis of same allegation which constituted the part of the criminal charge. The finality which is attached to the conclusion arrived at by a court of law cannot be discarded in the case of a finding of not guilty. When the disciplinary authority can act on the basis of the conviction of an employee recorded by a competent court, for the purpose of imposing punishment, it is not open to the employer to ignore the acquittal of the employee by such court and record a conclusion which is contrary to the finding of the court and then punish the employee for an act of alleged delinquency which

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constituted a part of the charge in the criminal case, in which the employee has been acquitted. I am clearly of the opinion that once a competent court records a finding of not guilty against an employee in respect of an act involving criminal offence, it is not open to the disciplinary authority to proceed against the employee departmentally on the same facts and pass an order of punishment by holding the employee guilty. This principle will of course be not applicable where the employer proceeds against an employee on some different charge after a finding of not guilty has been recorded by the competent court or where the acquittal is based on technical grounds like lack of jurisdiction, want of sanction or bar of limitation etc.

There is yet another reason why the finding recorded by a court should be treated as final. It is one of the basic principles of jurisprudence that administrative authorities cannot sit in judgments over the verdict of court of competent jurisdiction. The executive authorities cannot act as appellate authorities over the findings recorded by the court. Any such attempt will be total subversion of the system of administration justice. Therefore, here an employee has been acquitted of an offence by a court of competent jurisdiction after a regular trial and such acquittal is on merits, whether by giving benefit of doubt or otherwise, it is not permissible for the disciplinary authority to record a finding of guilt and punish the employee on the basis of the criminal charge. In some of the decided cases distinction has been sought to be made between the cases where the acquittal is honourable and though where the benefit of doubt has been given to the accused. The distinction though appears to be attractive in the first blush, is in reality wholly fallacious. The distinction is not based on any rationale. It is a settled principle of law that even in departmental enquiries a finding of guilt can be recorded only on the basis of some legally admissible evidence. An employee cannot be punished merely on the basis of some suspicion. There has to be

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some legal basis for recording of finding of guilt against the employee. In *Union of India versus H.C. Goyal*, AIR 1964 S.C. 364, their Lordships of the Supreme Court have held that suspicion cannot form a valid foundation for punishing an employee. That being the position it must be held that once an employee is found not guilty by a court of law, the employer cannot subsequently say that though the evidence has been found to be insufficient by the court for recording a finding of guilt, yet he is guilty of an allegation of misconduct in the departmental inquiry. It will be extremely anomalous if in respect of an act of an employee which constitute a criminal offence, the departmental authorities do not take sufficient care to assist the prosecution agency to bring home the guilt of the employee but at the same time seek to rely on the same set of evidence for recording a finding of guilt against the employee in the disciplinary proceedings. It is not possible to accept a situation that an employee is proceeded against a criminal offence by the court of competent jurisdiction and is acquitted by the court on the premise that the prosecution has failed to prove the charge by leading cogent evidence still the departmental authorities can punish him on the same set of evidence."

(19) In *Dr. Vijay Kumar Sharma versus Chief Secretary and Secretary to Government Punjab, Department of Vigilance and others (supra)*, a Division Bench of this Court held that once the acquittal is on merits and not on technical grounds, then the departmental enquiry cannot be initiated on the same set of allegations and that too after a period of seven years.

(20) In *S.K. Ramju versus Regional Manager, APSRTC, Nalgonda (supra)*, a Division Bench of Andhra Pradesh High Court quashed the proceedings of departmental enquiry on the ground that on an identical charge, the petitioner had been acquitted by the court of competent jurisdiction. Paragraph 10 of that judgment, on which reliance has been placed by Shri Gill, reads as under :—

"In that case there was absolutely no iota of difference between the criminal case and the departmental proceedings and as such, it was held that the



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departmental proceedings is vitiated in law. In the instant case, we are of the opinion that the case of the appellant stands on a better footing, in the sense, the misconduct which is said to have been committed by the appellant goes out of factual matrix, which was also subject-matter of criminal case and not independent. It is not a case where the petitioner was discharged with any misconduct unconnected with the said accident. In any event, as it has been held by the criminal Court that the appellant was not guilty of the charge of causing death and he had not been acquitted on the ground of benefit of doubt, we fail to understand as to how despite the said finding of competent Court of law, the reputation of the respondent-Corporation has been damaged.”

(21) The propositions which can be deduced from the ratio of the above noted judgments are :—

- (i) A trial for criminal offence and a departmental/domestic enquiry do not stand on the same footing. The degree of proof required in the departmental proceedings is not the same as it is in a criminal case. In a criminal case the prosecution is required to prove beyond doubt the guilt of a person charged with an offence, unless by some special provision of law the burden of proving innocence is placed on the accused person. But, in a departmental enquiry the charge can be established on the basis of some legally admissible evidence which may not be sufficient for bringing home the charge of a criminal offence.
- (ii) The departmental proceedings and criminal trial can be held simultaneously. However, if the departmental proceeding is based on the same set of facts on which the criminal action has already been initiated, it is proper for the employer to await the result of the prosecution.
- (iii) Ordinarily, the Court should not stay the proceedings of the departmental enquiry only on the ground of

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pendency of the criminal case. However, if it is convinced that departmental enquiry and the criminal charge are founded on identical facts and the defence of the accused is likely to be prejudiced, then proceedings of departmental enquiry can be stayed till the conclusion of the trial. Even in such cases, the stay of departmental proceedings can be withdrawn if the criminal trial is unduly prolonged.

- (iv) The departmental proceedings can be continued even after acquittal of the delinquent in the criminal case and the disciplinary authority can pass appropriate order on the basis of evidence produced during the enquiry. While doing so, it may also take into consideration the finding and conclusion recorded by the court of competent jurisdiction.
- (v) If the delinquent is acquitted in the criminal case on merits, the disciplinary authority cannot rely on the same set of evidence for imposing penalty.
- (vi) If the allegations constituting the basis of the departmental enquiry and criminal trial are not identical, the disciplinary authority is not bound by the finding recorded by the court of competent jurisdiction. Similarly, if the evidence produced in the departmental enquiry is different than the evidence produced in the criminal trial, then the disciplinary authority can take independent view of the matter and pass appropriate order of punishment.

(22) In the light of the above discussion, I shall now consider whether the departmental enquiry initiated against the petitioner is based on the same charge, which was subject-matter of criminal trial, and, therefore, in view of his acquittal by Additional Sessions Judge (III), Rohtak, charge-sheets are liable to be quashed. A combined reading of judgment Annexure P.6 and memorandums, dated 21st July, 1979 and 11th March, 1981 shows that while the prosecution of the petitioner was confined to the charge of having misappropriated 455.56 metric tonnes of slack coal, the departmental enquiry is being held against him not only on the charge of causing shortage of coal

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but also on the charges that he had not handed over the charge of slack coal physically to his successor—Shri Raj Singh and thereby violated the rules and acted in an irresponsible manner disregarding the orders of superiors that he had made fictitious and intentionally duplicate transactions regarding 160 metric tonnes slack coal and that he had deliberately refrained from joining the physical verification undertaken for measurement of the coal. It is, thus, evident that three of four charges on which departmental enquiry is being held against the petitioner were not subject-matter of prosecution. Therefore, there can be no justification, legal or otherwise, to quash the charge-sheet(s) or to restrain the respondents from continuing the departmental enquiry.

(23) The judgments relied upon by Shri Gill do not support the plea of the petitioner. In *Sulekh Chand and Salek Chand versus Commissioner of Police (supra)*, the Supreme Court gave relief because the appellant was acquitted on merits. In *Dr. Vijay Kumar Sharma versus Chief Secretary and Secretary to Government, Punjab, Department of Vigilance (supra)*, the petitioner had been acquitted on merits and the departmental enquiry was sought to be initiated after 7 years on the same set of allegations. In *Mohammad Umar versus The Rajasthan State Electricity Board (supra)*, the Court granted relief to the petitioner because the punishment was awarded on the basis of finding recorded in the criminal case in which he had been acquitted. Likewise, in *S.K. Ramju versus Regional Manager, APSRTC (supra)*, the proceedings of departmental enquiry were based on the same charge on which the petitioner had been acquitted. Thus, none of the decisions can be made basis for quashing the proceedings of departmental enquiry pending against the petitioner.

(24) No other point was argued.

(25) Hence, the writ petition is dismissed. It is hoped that the department would finalise the enquiry as early as possible and latest within a period of 6 months from the date of receipt of copy of this order.