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To,

- 1) The Secretary
State of Gujarat, Home Department (Police)
Sachivalaya, Gandhinagar (Gujarat)
- 2) The Director General of Police,
State of Gujarat, Home Department (Police)
Sachivalaya, Gandhinagar (Gujarat)
- 3) The District Superintendent of Police and the Disciplinary
Authority, Office of the DSP

Subject: Compliance with the circulars issued by the State of Gujarat clearly mandating to the effect that the Disciplinary proceedings may be held against the delinquents only in cases where the delinquents have been exonerated of the charges on technical grounds, but in no circumstances the departmental proceeding be held whenever the employees have received the clear acquittal on merits... And as such the principles laid down by Honourable the Supreme Court of India and followed by various High Courts need consideration and compliance... Failure to act in contravention amount to breach of the mandate given in the Circular letter issued by the State Government of Gujarat where a caution is made that the matter will be viewed seriously and a disciplinary proceeding against the authorities who conduct the inquiry will be initiated and punishment imposed in case such breach is found... Absence of formation of opinion by the Disciplinary authority... A call for dropping the departmental inquiry against Shri Ismailbhai Siddibhai Sumra, Unarmed Police Constable and Buckle number 821, Banaskantha, District Palanpur...

Whereas, Shri Ismailbhai Siddibhai Sumra, Unarmed Police Constable and Buckle number 821, Banaskantha, District Palanpur was prosecuted for an offence alleged to have been committed under the Prohibition Act before the Judicial Magistrate, First Class at Junagadh. However, the Honourable the Court on properly evaluating, appreciating and considering the relevant evidence laid by the prosecution “honourably acquitted” the accused of the charges so levelled. It appears, that the State of Gujarat has not carried the matter in appeal so as to challenge the legality, validity and propriety of the said judgment of clear acquittal on merits.

Under the circumstances, the judgment that is completely based on the merits and that too after taking into consideration the evidence placed by the prosecution on record is “binding” between the parties. However, taking into account some extraneous considerations, as also the considerations, that are completely irrelevant, the Disciplinary authority issued a charge sheet against the said employee as per a charge sheet dated: 12.08.2009 leveling the self-same charge that was forming the subject matter of Criminal Prosecution. It may be stated that the measure adopted by the Disciplinary authority with an intention to proceed on the self-same charge produces unsustainable illegality.

The State of Gujarat has issued a circular letter mandating to the effect that no departmental inquiry should be held against the employees on the self-same charge that was also forming the subject matter of criminal prosecution, provided the employees have been honourably acquitted of the charges levelled in a criminal trial. The Government has also cautioned all officers that a breach of the circular will be viewed seriously and a disciplinary proceeding will be held and penalty imposed whenever it is found that the Disciplinary authorities have violated the mandate contained under the said circular. In this view of the matter, the departmental inquiry is required to be dropped completely.

In addition to it, the said employee is legitimately entitled to the benefit of the Government Circular. The said Circular is not a mere piece of paper, but the Government has conferred the benefit upon the class of employees and as such the said circular is legally enforceable. Beside the departmental instructions to the Disciplinary authorities, the Government of Gujarat has created a right in favour of the particular class of employees. In addition to the right of the employees, the State of Gujarat has articulated such a policy keeping in mind the “principle of fairness”. If such fairness is not maintained, the action of the State becomes arbitrary and violative of Article 14 of the Constitution as held in case of State of Tamil Nadu v. EP Royappa, AIR 1975 SC Page 555.

By way of such a mandate issued, right created and promise held out to the Civil Servants of the State, the State has introduced its liability in law as held in cases of KP Joseph and Anglo Afghan decided by Honourable the Supreme Court of India.

K. P. Joseph's Case¹

In this case, the Union of India issued a memorandum fixing the salary of the re-employed Civil Servants. Respondent contended that the memorandum is enforceable and his pay should be fixed accordingly. The *Government took the contention that the memorandum is not enforceable, as the same does not confer any enforceable right in view of the fact that it has no statutory force*. It was argued that the same was having a *flavour of administrative character*.

The Supreme Court said that:

“Generally speaking, an administrative order confer no justifiable right, but this rule, like all other general rules is subject to exception. To say that an administrative order can never confer any right would be too wide a proposition. *There are administrative orders which confer rights and impose duties.*”

The Supreme Court said that the Respondent had a right to claim his salary fixed in accordance with the memorandum issued by the government.

Anglo Afghan Agencies Case²

In this case, the Supreme Court *enforced the administrative instructions* holding that the *Union of India was not justified in falling back on the promise held out to the Citizens*.

The Textile Commissioner published a Scheme called “Export Promotion Scheme” providing for incentives to exporters of woollen goods. Under the scheme, the Exporter was required to be registered and in that case, only he could get the “entitlement certificate for 100% import of goods.” The Import Entitlement Certificate was given at a reduced rate under the direction of the executive wing. The petitioner instituted a petition challenging the legality and validity of the impugned action. The petitioner succeeded in the petition. The Union of India then filed an appeal before the Supreme Court and attempted to relieve itself from the solemn promise. The Court held that:

¹ Union of India v. K.P. Joseph AIR 1973 SC 303

² Union of India v. Angle Afghan Agencies AIR 1968 SC 718

“Granting that it was executive in character, the *Courts have the powers in appropriate cases to compel performance of the obligation imposed* by the schemes upon the departmental authorities. It could not be said that the executive necessity releases promises relying upon which citizens have acted to their detriment. Under the constitutional set up, no person may be deprived of his right or liberty except in due course of and by authority of law, if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law common or statute the *courts will be competent to, and indeed would be bound to protect the rights of the aggrieved citizen*”.

In the present case the scheme was published under the Imports and Exports (Control) Act, 1947, but it was held to be administrative in character. Court took into consideration that there is *no logical sequence in the policy statement*. It is a jumper of executive instructions and matters that impose several restrictions and restrictions upon the rights of the citizens. Some of the provisions that impose restrictions upon citizens in the exercise of their right to carry on trade without statutory limits may be open to serious objections. The *Supreme Court held that the government is bound on the basis of the representation made by the union of India under the Scheme*.

The action to proceed against the said employee is without any power, authority and jurisdiction. Even if the inquiry is to be held for some cogent reasons sustainable in law, the disciplinary authority is required to “form an opinion” in this behalf. The obligation for “formation of opinion” is imposed by the existing law and the judicial pronouncement so that the “mental process and mental integrity of the State officers can be judicially scrutinized. It is, therefore, that the Disciplinary authorities should always form an honest formation of opinion by taking into account relevant considerations. On such necessity of taking into account relevant considerations, the Honourable the Supreme Court of India has held that:

The Executive³ have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account considerations⁴ that are wholly irrelevant or extraneous. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The courts have power to see that the Executive acts lawfully. They cannot avoid scrutiny by courts by failing to give reasons. If they give reasons and they are not good reasons, the court can direct them to reconsider the matter in the light of relevant matters though the propriety adequacy or satisfactory character of these reasons may not be open to judicial scrutiny. Even if the Executive considers it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts.

³ M/s Hochtief Gammon V/s State of Orrisa, AIR 1975 SC 2226 at page 2234 paragraphs 13 of the reports.

⁴ R V Cotham [1898] 1 QB 802; Anisminic Ltd V Foreign Compensation Commission [1969] 2 AC 147; Roberts V Hopwood [1925] AC 578

Here, no formation of opinion is also communicated although the employee represented in this behalf. It transpires that the action to proceed against the employee is nothing but an action in mala fide.

Judicial precedents in relation to competence of inquiry:

The question whether or not the departmental inquiry pending against the employee involved in the criminal case should be continued even after his acquittal in criminal case is a matter which is to be decided by the department *after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it is not expedient to continue a departmental inquiry on the very same charges or grounds or evidence. However merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered*⁵. It needs to be emphasized that none of the aforesaid cases, not one of them supports the much wider proposition canvassed on behalf of the State that on the same material and on re-appreciation of the same oral evidence, without anything more, it is open to a disciplinary authority to take just the contrary view to the judicial view taken by the Court of law and notwithstanding the order of acquittal, to record a finding of guilt against the delinquent and to dismiss him from service. The proposition is an astounding proposition for if it were to be upheld, even the finding of acquittal rendered by the Supreme Court may be disregarded and a disciplinary authority, say, a Deputy Superintendent of Police, may take the view that it is open to him to believe the evidence of witnesses not believed by the competent Court and to act on the same evidence and to hold a person guilty notwithstanding that the Criminal Court came to the conclusion that on the very same evidence the accused was entitled to acquittal and the decision was confirmed by even the High Court and the Supreme Court. If this were accepted as a true position of law, it would wholly undermine respect for the judicial administration. Nay it would even promote disrespect for the institution of law and justice. What then is the true position of law if an acquittal does not operate as an absolute bar to the initiation of a disciplinary proceeding and at the same time the disciplinary authority cannot hold the Government servant concerned guilty on the same evidence and the same material? The true position would appear to lie within the hinterland between the two extremes. A Departmental proceeding cannot be initiated as a matter of course or without anything more when the court of law has acquitted the delinquent. It can be undertaken only if special circumstances are shown to exist. It would not be desirable to exhaustively adumbrate these circumstances. But the illustrative or typical situations can be by and large conceived.

⁵ Corporation of City of Nagpur Vs. Ramchandra G. Modak ; 1984 Lab IC 179

For instance

- (1) the Court might have acquitted the accused on the ground of failure to obtain the requisite sanction or
- (2) the acquittal may be grounded on the circumstance that there was no sufficient evidence by reason of the fact that the prosecution witnesses had not remained present and the request made for adjournment to enable the prosecution to examine witnesses was not granted.
- (3) The charge was defective and trial was vitiated on account of prejudice occasioned to the accused.
- (4) When the case is that of circumstantial evidence and acquittal is rendered by extending benefit of doubt on the ground that the prosecution has failed to establish its case beyond reasonable doubt
- (5) When some of the witnesses who implicate the accused are believed but others are not believed and in view of conflict of evidence acquittal is ordered on the doctrine of benefit of doubt.

In this case, reliance was, however, placed on the observation made in Motising's case⁶ to the effect that degree of proof in a departmental proceeding is different from the degree of proof required in a criminal case. This observation, however, does not pertain to the realm of appreciation of oral evidence at all. It may have relevance in the context of circumstantial evidence or the totality of evidence. The question of standard of proof or degree of proof is altogether irrelevant in the context of appreciation of oral evidence. There cannot be a different standard or criteria for assessing the credibility of a witness depending on the nature of forum of enquiry. Surely it is not suggested that uninspiring evidence which is considered unworthy of credence by a court in a criminal case can be acted upon in a departmental proceeding? Veracity and credibility of a witness cannot depend on the nature or forum of a proceeding. [It may be stated in parenthesis that the departmental proceeding is quasi criminal by its very nature]. It is, therefore, wrong to read by implication such an over-bold proposition into Motising's case. It is not the ratio of the said case that on re-appreciation of the same oral testimony incredible evidence can be branded as credible and reliable by the disciplinary authority in a disciplinary proceeding. No such question was directly raised, discussed, or answered as suggested and such is not the ratio of the decision⁷."

⁶ 7 G.L.R. 409

⁷ Abdul Hakim v. District Superintendent of police, (19) GLR 210

In a case⁸, Justice RC Mankad observed that in the instant case though the charge in the departmental proceedings is not that the petitioner had committed offences punishable under Section 66(1) (b) and 85(1) (3) of the Bombay Prohibition Act and Ss. 110 and 117 of the Bombay Police Act, the charge is founded on the same facts. In the case before the learned Magistrate the allegation was that the petitioner had consumed liquor and he had misbehaved with co-passenger under the influence of liquor. There is no charge regarding consumption of liquor or misbehavior under influence of liquor in the departmental proceedings but the charge is confined to misbehaving with co-passenger. In other words, both in the prosecution and the departmental proceedings the common charge is regarding misbehaving with the co-passenger. The witnesses who were examined in the trial and the departmental proceedings were the same and except the evidence with regard to consumption of liquor the evidence on which the charge in the departmental proceedings is founded is also the same. There, *very same evidence which was appreciated by the learned Magistrate and which was found unreliable by him is tendered in the departmental proceedings to prove the charge of misbehavior against the petitioner.* Having regard to the above facts and circumstances of the case, in my opinion, the charge against the petitioner is held to be proved on re-appreciation of the same evidence and material which was before the learned Magistrate. *Therefore, the case of the petitioner would squarely fall within the ratio of the decision of this Court in Abdul Hakim's case (Supra). It is not open to the disciplinary authority or the appellate authority to take the view contrary to the judicial view taken by the Court of law on the basis of re-appreciation of the same oral evidence. In fact, after his acquittal by the learned Magistrate disciplinary proceedings, even if initiated, could not have been continued against the petitioner. In any case the disciplinary authority and the appellate authority could not have found the petitioner guilty of the charge levelled against him on the basis of the same evidence. The court of law having examined the evidence and found it to be unreliable on the same evidence, the petitioner cannot be held guilty of the charge of misbehavior, which was part of the charge on which the petitioner was prosecuted before the learned Magistrate. In my opinion, therefore, following the decision of this Court in Abdul Hakim's case (Supra) this petition must succeed.*

⁸ Special Civil Application NO: 2294 of 1988 decided by Justice RC Mankad, Gujarat High Court.

Criminal case as also the departmental proceedings were based on identical set of facts namely the raid conducted at the appellants' residence and recovery of incriminating articles therefrom'. The finding recorded by the inquiry 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 Inquiry Officer and the Inquiry 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.

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 case⁹.

The view taken by the Division Bench of the Mysore High Court in case of P. Channappa vs. Mysore Revenue Appellate Tribunal, Bangalore and others¹⁰, wherein it has been observed that when a particular charge had been enquired into and found against by a competent criminal court, Tribunals constituted under other enactments, cannot again enquire into the same charges, so long as the acquittal before the Criminal Court is not on any technical ground, but on merits. AIR 1952 Mad 853 and AIR 1962 Mysore 84 and AIR 1961 305 relied upon. Consequently, where a person has been acquitted of the charge of overloading by a competent Criminal Court, the tribunals constituted under the Motor Vehicles Act cannot go over again into the question of truth or otherwise of that charge and arrive at a conclusion contrary to the one reached by the court.

⁹ M. Paul Anthony v. Bharat Gold Mines, AIR 1999 SC 1416

¹⁰ AIR 1966 Mysore 68

It is true that the findings of the criminal court will not be binding in a Civil trial, but here the question is different; whether that finding will be binding on the department for the purpose of instituting a departmental inquiry after the decision in the criminal case is the point for consideration. Sometimes both the criminal trial and departmental enquiry go on. There is no bar against that. But, if a departmental inquiry is withheld till the decision of the criminal trial, then that decision should be taken into account and cannot be overridden by continuing the departmental enquiry thereafter on the identical charges. Furthermore, if a departmental enquiry is not at all launched but a criminal case is instituted and that ends in acquittal of the accused, it will not be proper for the department again to proceed on the same charges. The judgment in the criminal trial in the present case was certainly admissible in the civil court under the Evidence Act for the purpose that there was a criminal case of identical charge and it ended in acquittal of the accused. The other findings or the evidence led in the criminal trial are irrelevant, but the conclusion of the trial is admissible in evidence. In that view and following the principle laid down in the case mentioned above of the Madras High Court. I am inclined to accept the contention of the learned counsel for the appellant that the departmental enquiry on the charges of the identical nature in the criminal trial was not justified¹¹.

In a case¹² the Madras High Court on reviewing various authorities laid down the principle as under:

(1) An administrative authority, in initiating disciplinary proceedings, is not bound to wait for the verdict of a criminal court but where the criminal court has tried the concerned person and acquitted him it would be improper and such a proceeding is liable to be quashed as not in consonance with the principles of natural justice if the administrative authority later initiates disciplinary proceedings on the identical facts, evidence and charges if the acquittal had been substantially on the merits;

(2) There is no rigid or inflexible rule that a finding of a criminal court is conclusive in every sense upon the administrative authority. For instance, it may punish on the same facts for some lesser charge, which may not amount to a criminal offence but may well amount to a grave dereliction of duty entitling disciplinary action. This was illustrated by referring to a School Master being acquitted for a charge of rape of girl student, but still departmental action being possible against the schoolmaster for grave impropriety in his relationship with a girl student, which would disentitle him to that offence;

¹¹ **Batna Singh Vs. National Coal Development Corporation; 1969(1) LLJ 664**

¹² **Saik Kasim v. Superintendent of Post Offices, AIR 1965 Mad 502**

(3) Where the acquittal is substantially on the merits, it will not be proper for a disciplinary Tribunal to record a finding of guilt on identical facts and charges and also to punish; this being a basic principle of jurisprudence the court exercising jurisdiction under Article 226 of the Constitution would be Justified in striking down the action based on such findings as not in consonance with principles of natural justice.

In case of *Bhagwati Charan v. State of Uttar Pradesh*, (1973) 2 SLR 238 = (1973 Lab I C 1421 (All) Honourable the Allahabad High Court observed that “departmental proceedings on the basis of the same charge are not competent if a person has been honourably acquitted by the criminal court”.

In a case between Gujarat State Road Transport Corporation, Ahmedabad and Rupsingh Veghji Rathod¹³ the High Court of Gujarat observed:

“5. The answer is furnished by the judgment of this court in *Abdul Hakim Ahmed v. District Superintendent of Police* reported in 19 GLR 210 LPA NO: 43 of 78 against the said judgment was summarily dismissed by the Division Bench... Thus, the *High Court* has laid down that a departmental proceeding cannot be initiated as a matter of course of without anything more when a court of law has acquitted the delinquent of the same charge and such disciplinary proceeding can be undertaken only if special circumstances are shown to exist. Some illustrative situations have also been indicated where the acquittal is based on want of requisite sanction; or the prosecution witness not remaining present; or charge being defective or when the benefit of doubt is given; when the case is of circumstantial evidence; where some of the witnesses have been believed and others are not believed and because of conflict of evidence benefit of doubt is given. But when the criminal court has appreciated and disbelieved the evidence same evidence cannot be believed by the disciplinary authority and it is not open to the disciplinary authority to take a contrary view.

6. In the present case there is a clear acquittal on merits after appreciating the evidence and examining eye witnesses and therefore the disciplinary proceedings could not have continued at all and, therefore, the lower courts were justified in holding against the appellant Corporation.”

In case of *Sulekh Chand and Salek Chand v. Commissioner of police and other* reported in JT 1995 (1) SC 23, following observations have been made by the Supreme Court:

¹³ 1985 LAB IC1095

“... This claim was resisted by the respondents on the ground that in 1983, he was charged for an offence under Section 5(2) of the Prevention of Corruption Act and he was kept under suspension and he was also communicated adverse remarks for the period from...and that he became eligible to be considered for promotion as SI...Therefore, his case was considered for promotion as SI with effect from...Therefore, his case was considered and he was promoted in 1989...We have perused the proceedings of DPC. which would clearly show that the reasons which prevailed with the DPC. were the prosecution under Section 5(2) of Prevention of Corruption Act and the departmental enquiry against the appellant. It is not in dispute that the proposed departmental enquiry also is related to the self-same offence under Section 5(2) of the Prevention of Corruption Act. The judgment acquitting the appellant of the charge under Section 5(2) *became final and it clearly indicates that it was on merits*. Therefore, once the acquittal was on merits the necessary consequences would be that the delinquent is entitled to reinstatement as if there is no blot on his service *and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental inquiry on the self-same allegations and take appropriate disciplinary action. But, here, as stated earlier, the acquittal was on merits*. The material on the basis of which his promotion was denied was the sole ground of the prosecution under Section 5(2) and that ground when did not subsist, the same would not furnish the basis for DPC to overlook his promotion. We are informed that the departmental enquiry itself was dropped by the respondents. Under these circumstances, the very foundation on which the DPC had proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date immediate junior was promoted with all consequential benefits. The appeals are allowed.”

In case of Kiritsinh Mohabatsinh¹⁴, the Gujarat High Court observed:

“20. In the present petition, for the question involved which has been involved, conflict view of various High Court as well as of the Apex Court. There are two expressed views on this point. One view is that after acquittal, no inquiry can be held and one other contrary view is that acquittal is immaterial and it does not restrict the power of disciplinary authority to hold inquiry. The middle view is that after acquittal, it will depend upon the facts and circumstances whether to hold inquiry or not. There is conflict opinion whether after acquittal, departmental inquiry can be held on the basis of the same facts. I have considered relevant decisions on this point and the same can be summarized as under:

¹⁴ Decided by his Lordship Justice HK Rathod on 8th December, 2000 (Gujarat High Court)

“(i) Criminal prosecution and departmental proceedings on identical charges can continue simultaneously.

(ii) The decision rendered in the criminal case is not binding on the Enquiry Office who conducts disciplinary proceedings. Similarly, findings recorded in the departmental proceedings are not binding on the court as neither is the appellate authority of the other.

(iii) Normally on an honorable acquittal of the employee by the criminal court, the departmental proceedings, in difference to the findings recorded by the court, are not initiated but if the acquittal is based on a technical ground or the employee concerned is given benefit of doubt, the departmental proceedings on the same charges can still be initiated and if already pending can be concluded uninfluenced by the order of discharge or acquittal recorded in the criminal case on the said grounds.

(iv) The departmental and the criminal proceedings can be initiated simultaneously against the delinquent employee and he can also be put under suspension pending enquiry or contemplated disciplinary proceedings as per rules; and that the disciplinary proceedings can also be continued and concluded without waiting for the conclusion of the criminal case against the employee on the same charges provided the case does not involved complicated questions of fact and law, or that the ultimate decision in the departmental proceedings would necessarily not be based entirely on the result in the criminal cases itself.

(v) If the case involves complicated questions of fact and law and the matter is pending in the criminal court, where the employee is to face his trial, the departmental proceedings, as the Supreme Court says, should be stayed.

(vi) In order to find out what is "complicated question" help can be taken from the meaning given to the phrase "substantial question of law" which means the question not settled by the Supreme Court in regard to which there is difference of opinion and so the question is debatable. The position with regard to complicated question of law cannot be different and it will depend upon the facts of each case.

(vii) When the charge is of embezzlement and it is contended that the determination of this charge involves consideration of the procedure for operating bank account, accounting system and individual responsibility of each person including the cashier, the peon, the Superintendent and the drawing and disbursing officer then when only a charge sheet is given but explanation has not been received it cannot be said that the case involved complicated question of law and fact. They may become involved at any subsequent stage but till then departmental proceedings cannot be stayed.”

21. I have considered the observations made by the Apex Court as well as this Court and other Courts. Considering the law laid down in respect to the question involved in the present petition, the facts of the present case are required to be considered along with principle which has been laid down by the Apex Court. In the present case, the complaint filed by one Gopalbhai Karshanbhai Patel dated 19th September, 1998 become a base or foundation for departmental charge sheet dated 18th September, 1999 and criminal case lodged against the petitioner in criminal case No. 9 of 1999. I have perused both the charge sheet viz. departmental charge sheet and the charge sheet on which the criminal case was prosecuted and on perusal of these charge sheet (sic), there is no slightest change between the two charge sheets and in both charge sheet, same set of facts, same incident and same language has been used against the petitioner. Not only that in departmental charge sheet, the competent authority has not pointed out slightest difference from the charge sheet of criminal prosecution. In department charge sheet, what is intended to be considered is misconduct under the relevant rules and even no such clause has been mentioned. It is also noted that such conduct of the petitioner amounts to misconduct under the relevant rules has also not been pointed out and even as to why the charge sheet is required to be issued and that aspect has also not found in the departmental charge sheet. It is the duty of the departmental authority which must have to point out to the employee that his conduct in respect of such incident in question, becomes a misconduct under the relevant disciplinary rules of the department. This important fact has remained absence in departmental charge sheet. Therefore, according to my opinion, there is no slightest difference between two charge sheets and therefore, the main complaint dated 19th September, 1998 become the sole base for both these charge sheets. The name of witnesses mentioned in the department charge sheet and in the criminal charge sheet are common and even there also, no difference either in number or name has been pointed. In criminal case, all the witnesses were examined not only that some more witnesses were examined by the Special Court and the Special Court has come to the conclusion that the petitioner is not at all liable and committed any offence as alleged against the petitioner. I have also perused the entire judgment rendered in criminal case and there is clear finding of fact after

examination of the witnesses as well as on consideration of oral evidence which were placed on record before the Special Court. It is a clear acquittal on merits and there was no iota of difference between two charge sheet and between two proceedings held against the petitioner. Therefore, in such circumstances, whether department can be permitted to hold inquiry ignoring the judgment of the criminal case which was delivered on merits, would certainly amounts to giving permission to the department to give go by to judicial pronouncement by the competent criminal court, which has thoroughly examined the charges levelled against the petitioner on appreciation of documentary and oral evidence and testimony. But in my opinion, such permission cannot be granted in light of the facts of the present case. It is also pertinent to note that when facts and evidence in both proceedings namely the departmental proceedings and criminal case were the same without there being any iota of difference then distinction which is usually drawn between the departmental proceedings and the criminal case on the basis of object and burden of proof would not be applicable to the present case of the petitioner.

22. Now looking to these decisions and observations made by the various High Courts as well as Apex Court, the decision of the Apex Court in case of Corporation of City Of Nagpur Vs. Ramchandra reported in 1981 (2) SCC page 714, wherein it was held that if the accused is completely exonerated of the charges then departmental inquiry is not justified. Merely very acquittal and the matter has to be decided by the appointing authority keeping in mind the circumstances of the case. Normally where the accused is acquitted honourably and completely exonerated of the charges, it would not be expedient to continue departmental inquiry on the same charges or ground and the same evidence but the fact remains that merely because the accused is not guilty, the power of authority to conduct and continue departmental inquiry is not taken away nor its discretion is in any way fettered. If the authority feels that there is some sufficient evidence and good ground to proceed with the inquiry, it can certainly do so but in that case, after acquittal the authority has to justify the circumstances, grounds and material before the Court to exercise discretionary powers after acquittal to hold departmental enquiry in respect of the same charge based upon the same set of facts. Now considering the observations of the Apex Court, if this considers the facts and circumstances of the present case, then in the present petition, the petitioner has challenged continuation of departmental inquiry after his acquittal on merits. Before approaching to this Court after acquittal, the petitioner has approached the respondent authority and considering the finding recorded by the learned Special Judge, Baroda in criminal case, wherein the petitioner has been declared acquitted on merits. Therefore, on the basis of the same charges, same set of facts, same incident, having common witnesses, departmental inquiry may not be continued and requested to drop the said proceedings initiated against the petitioner and revoke the suspension order which has been passed by the authority during the pendency of the

departmental inquiry. In response to the said request made by the petitioner to the respondent authority, a written reply has been given and the same has been produced by the petitioner on record. I have perused the said reply. The respondent authority has rejected the said request of the petitioner without giving any sufficient reasons only on the ground that after acquittal, it is a right of the employer to hold departmental inquiry and there cannot be any bar for initiating departmental inquiry against the petitioner. This answer cannot be considered to be sufficient. It is the duty of the respondent authority to justify their action of holding departmental inquiry or continuation of departmental inquiry after acquittal on merits. It is the duty of the respondent authority to consider the finding given in criminal case by the Court on merits and to consider the fact in light of such findings on merits whether it is in the interest of the department to continue the departmental inquiry against the petitioner or not ? It is also further duty of the respondent authority that after acquittal on merits if they want to exercise the discretion to continue the departmental inquiry against the petitioner, in that case, they have to justify by giving cogent reasons, material evidence and ground before the Court that on such reasons, the departmental authority is entitled to hold departmental inquiry even after the acquittal on merits. The respondent authority has filed reply against the present petition wherein, action of continuation of departmental inquiry is under challenge. After perusal of the entire reply filed by the respondent authority, this Court is of the clear opinion that not a single whisper has been made out by the respondent authority that on this ground or on this material or circumstances, which can be considered to be justified to hold departmental inquiry against the petitioner even after acquittal on merits... respondent authority has not produced any material along with reply and not disclosed any circumstances, material, grounds and relevant circumstances in their reply for exercising their discretionary powers to continue said departmental inquiry even after clear acquittal on merits. Therefore, even considering the observations made by the Apex Court in case of Corporation of City of Nagpur, such discretion no doubt held by the respondent authority but such discretion must have to be justified before the Court of law where, challenge has been made by the petitioner. Right to hold inquiry cannot be considered to be justified ground but the same is required to be justified by supporting material, some concrete evidence and such grounds as well as circumstances to show that even after acquittal on merits, Department is justified in holding or continuing the departmental inquiry against the delinquent. If the respondent authority fails to justify before the Court then it amounts to merely harassment to the delinquent for exercising their powers to hold departmental inquiry without any justification by the respondent authority. Therefore, in such circumstances, looking to the facts of the present case and considering the reply filed by the respondent authority and further considering the fact that even at the time of arguments, counsel for the respondent has not been able to point out that these are the circumstances and material evidence which can be considered to be justified to continue departmental inquiry against the petitioner even after his

honourable acquittal on merits. I have perused the charge sheet issued to the petitioner by the department and I have also perused the charge sheet issued against the petitioner in Criminal Case. I have also referred the findings of facts arrived in criminal case so also considered both the proceedings and this Court is of opinion that common witnesses, one incident, same set of facts and positive finding on merits after appreciating the evidence led in criminal proceedings which resulted to the conclusion that the petitioner is not held to be liable for any offence as alleged according to the incident against the petitioner. Therefore, considering all these aspects of the matter and facts of the present case with the law laid down in the aforesaid decision of the Apex Court and various High Courts of the country, according to my opinion, discretion having been exercised by the respondent to continue the departmental inquiry against the petitioner even after honourable acquittal in criminal case, cannot be justified and substantiated and the same cannot be permitted to the respondent without any justification under the circumstances, especially when the respondent authority has failed to prove such circumstances, evidence, material and grounds which can be justified to continue departmental inquiry against the petitioner. Thus, it is clear that the respondent has failed to prove any justification for continuing the departmental inquiry against the petitioner after his honourable acquittal on merits in respect of the same charges, same set of facts, one incident, common witnesses and therefore, according to my opinion, after honourable acquittal on merits, looking to the facts and circumstances of the present case, the respondents are not entitled to continue the departmental inquiry against the petitioner and therefore, charge sheet which has been issued by the department and inquiry initiated against the petitioner by the department are required to be quashed and set aside.

23. Therefore, according to my opinion, the departmental charge sheet and departmental inquiry which has been initiated against the petitioner are required to be set aside. Moreover, in the present petition, when the departmental charge sheet and inquiry are set aside then the consequences naturally would be setting aside the order of suspension dated 2nd October, 1998 because the said order of suspension is passed during the pendency of departmental inquiry and when departmental inquiry does not survive and shall not remain in existence along with the departmental charge sheet on which said proceedings have been initiated, then naturally, suspension order dated 2nd October, 1998 is also required to be quashed and set aside. Therefore, both these petition i.e. Special Civil Application No.8465 of 1998 and Special Civil Application No. 6356 of 2000 are allowed accordingly and the charge sheet dated 18th September, 1999 and pending departmental inquiry and suspension order dated 2nd October, 1998 are required to be set aside and the same stands quashed and set aside accordingly. However, while setting aside the entire charge sheet, inquiry and suspension order, it cannot be ignored to note that against the clear acquittal of the petitioner, the respondent - State has filed appeal before this Court and the said appeal is

admitted by this Court. Therefore, though this Court has set aside the charge sheet, departmental inquiry and the suspension order only in light of the fact of clear acquittal of the petitioner in criminal case No. 9 of 1999 but however, it is open for the respondent, in case, if the clear acquittal of the petitioner in criminal case is set aside by appellate court in future, in such circumstances, it would be open to the respondent authority, to take appropriate action against the petitioner in accordance with law. In the result, both these petitions stand allowed to the aforesaid extent and the Civil Applications stand disposed of in terms of the order passed in these two main petitions. Rule is made absolute to the extent indicated hereinabove”.

In view of what has been stated in the representation for and on behalf of the said employee, it would be in the fitness of things to drop the departmental inquiry on the charge for which the said employee is honourably acquitted by a competent criminal court.

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