Md. Khairul Alam Vs The State

Court: Calcutta High Court

Date of Decision: March 31, 2011

Acts Referred: Administrative Tribunals Act, 1985 â€" Section 19
Criminal Procedure Code, 1973 (CrPC) â€" Section 248(1), 452
Penal Code, 1860 (IPC) â€" Section 147, 148, 149, 304, 307

Citation: (2011) 3 CALLT 227 : (2011) 2 CALLT 80

Hon'ble Judges: Pratap Kumar Ray, J; Mrinal Kanti Chaudhuri, J

Bench: Division Bench

Advocate: Md. Basir Layek, for the Appellant; Murari Mohon Das and Ms. Tanusri Pal Chowdhury for the State, for the Respondent

Final Decision: Dismissed

Judgement

Pratap Kumar Ray, J.
Heard the learned Advocates appearing for the parties.

2. Assailing the order dated 4th May, 2007 passed in O.A. No. 1613 of 2001 by the West Bengal Administrative Tribunal, this writ application

has been filed.

3. The impugned order reads such:

4.5.2007 -This is an application u/s 19 of the Administrative Tribunals Act, 1985, filed at the instance of Md. Khairul Alam, petitioner herein,

paying for a declaration that the enquiry initiated against the applicant through Proceeding No. 17 dated 06.12.1999 should not be given any effect

or further effect with further prayer praying for not to interfere with the service of the present applicant.

Subsequently, after taking leave of this Tribunal, the petitioner has filed one supplementary application challenging the final order passed in the

aforesaid departmental proceeding praying for quashing the same.

The short facts leading to the filing of this application are as follows:

The petitioner is an employee of the West Bengal Police having No.C/3657, now posted at Calcutta Airport, and he was discharging his duties

and responsibilities quite efficiently to the satisfaction of his superiors.

It has been alleged by the petitioner that he was falsely implicated in a case being Bharatpur Police Case No.2(6) 88 u/s 148/149/326/506 of IPC,

but the said case has been amicably settled before the Court of the Learned Sub/Divisional Judicial Magistrate, Kandi on 02.08.1988. But after

lapse of almost 11 years, one departmental proceeding was initiated on the basis of the aforesaid Article of charges, which by then became stale,

and in the aforesaid proceeding, proper procedure was not followed, and the Enquiring Officer compelled the application to put his signature on

the papers, wherein purported two declarations were obtained from him-one was to the effect that the applicant was unwilling to produce defence

witness, and secondly applicant was unwilling to submit written statement of defence. And subsequently, relying on those declarations, enquiry

proceeding was concluded, and the finding were made against the petitioner, when it is quite well settled position that on the self-same cause of

action, departmental proceeding and the criminal proceeding cannot go side by side, and thereafter in utter violation of the procedural norms,

provisional order as also the final order have been passed.

It has further been alleged on behalf of the petitioner that the punishment, as inflicted in the present case, was passed in violation of Rule 856 of

PRB, and the punishment is absolutely disproportionate, and as such, it should be interfered with. Hence, this prayer.

This application, however, has been resisted on behalf of the State Respondents by filing reply, denying all the material contentions raised by the

petitioner in his application.

It has, inter alia, been contended on their behalf that when the petitioner was posted at D.A.P., North 24 Parganas, he went to his native village

and got himself involved in Bharatpur P.S. Case No. 02 dated 20.06.1988 under sections 148/149/326/506, and he was forwarded to Kandi

Court on 21.06.1988, and he was released on bail.

Again on 15.11.1994, he was involved in Bharatpur P.S. Case No.78 dated 15.11.1994 under sections 147/148/149/323/324/427/307 of IPC

and 3/4 of ES Act. In connection with the aforesaid case, he was arrested and forwarded to Kandi Court on 21.11.1994, and the above case, he

was remanded to jail custody till 26.1.1994.

On the basis of the aforesaid allegations, Proceeding No. 17 was initiated against him, wherein, Bangshi Badan Mondal, CLA of North 24

Parganas was appointed as Enquiry Officer, and the concerned Enquiry Officer, maintaining all formalities, concluded the proceeding of the enquiry

and submitted findings to the Respondent Authority stating that the charge against the petitioner has been proved, and the petitioner was given all

possible opportunities to defend his case.

It was further contended on their behalf that the departmental proceeding and the criminal proceeding being separate and scope being different,

and there being no specific clear-cut guideline or rule, such departmental proceeding may continue, even if criminal case is pending. So, It was

contended on behalf of the Respondents that there was no illegality or irregularity in the aforesaid departmental proceeding, and as such, no

interference need be made in the connected matter.

Consequently, they pray for dismissal of this case.

Now, the only question which we are called upon to decide here is as to whether the petitioner is entitled to the reliefs as prayed for or not.

We have heard the learned counsels appearing for the parties in length. We have also perused the available materials on record with meticulous

care.

In the instance case, the petitioner before us has come up challenging the departmental proceeding initiated against him, and also by challenging the

provisional order and final order passed in the aforesaid proceeding, alleging mainly that charges against the petitioner, brought in the departmental

proceeding, were in relation to the incident which had taken place in the year 1988 and 1994, but the proceeding was initiated by serving Article of

charges during the year 1999, and by that time, the charges had already become stale, and as such, no proceeding could be proceeded with such

stale charges.

It is true that in a proceeding, where charges have become stale, it would be unfair to permit the departmental enquiry to be proceeded with such

Article of charges, but here in this case, the situation is something different, because from the materials available before us, it is revealed that first

criminal case, in which petitioner was involved, was initiated on 20.06.1988, and the second incident of criminal case took place on 15.11.1994.

In fact his department was aware of both the cases but certainly they took time for initiating the aforesaid proceeding.

Now, the question would be - whether for initiation of such proceedings during the year 1999, it would be regarded that the charges against the

petitioner for his involvement in the criminal cases, have become stale or not.

In this connection, it may be indicated that it is our general knowledge and common expedience that normally disposal of criminal cases take long

years in our country.

There is also divergence of opinion as to the issue - whether or not the criminal case and the departmental proceedings could go on simultaneously

or not. In a situation like this, if the concerned authority waited for some years for initiation of the departmental proceeding against the present

petitioner for his involvement in the criminal case, in our view, it cannot be accepted that charges of this nature have become stale.

So, we find no force in the contention of the present petitioner, and consequently, we do not find any reason for our interference on this ground.

Second objection that has been taken on behalf of the petitioner against the final order and provisional order is to the effect that no reason has

been given in the final order as also in the provisional final order. But looking into the provisional order as also the final order passed in the

connected matter, we find that it is quite true that no elaborate discussion has been made by the concerned authority in passing the provisional

order as also the final order, yet, in due consideration of the material available on record, and for not filing written statement and for not examining

defence witnesses by the petitioner during enquiry proceeding, the aforesaid findings were made.

It is also quite settled position of law that tribunal cannot sit as a court of appeal over a decision on the basis of the findings of the Enquiring

Authority in the disciplinary proceeding, and where there is some relevant materials, which the Disciplinary Authority has accepted, and which

material reasonably support the conclusion reached by the Disciplinary Authority, it is not the function of the Administrative Tribunal to review the

same and reach different findings than that that of the Disciplinary Authority.

Examining the materials available on record, on the basis of the aforesaid board settled principles, we find no infirmities in the provisional final order

as also the final order. So on these count also, we find no merit in the claim of the petitioner.

Furthermore, it is quite settled position of law that in judicial review, Courts or tribunal are mainly concerned with the infirmities/illegalities in the

decision-making process and not to the decision itself.

But here in this instant case, nothing of that kind could be urged before us with regard to the illegalities/ infirmities in the decision making process.

Rather, scrutiny of the materials on record reveals that all reasonable opportunities were given to the present petitioner in the departmental

proceeding, and it is he who himself has chosen not to file written statement and to examine defence witnesses. Consequently, we find no reason

for our interference with the disciplinary proceeding and the findings made therein.

Last but not the least is the objection that has been taken in the instant case is that the punishment that has been inflicted against the petitioner is

disproportionate to the gravity of misconduct, and as such, it is violative of Article 14.

It is quite settled position of law that penalty imposed must be commensurate with the gravity of misconduct, and that any penalty disproportionate

to the gravity of the misconduct would be violative of Article-14 of the Constitution.

It is also quite settled position of law that relation of punishment or quantum of punishment to be imposed is a matter purely within the domain of

the Disciplinary Authority, and the scope of interference by way of judicial review is very limited. But that does not mean that in appropriate case,

Court or tribunal cannot interfere with such punishment inflicted on a person. In a case where the punishment is strikingly disproportionate and not

in commensurate with the proven guilt, the Court or tribunal may interfere, and it cannot allowed to remain uncorrected in judicial review.

So, having examined the materials record, in the background of the aforesaid settled position of law, we are not in a position to accept at the

punishment imposed upon the present petitioner was strikingly disproportionate and no in commensurate with the proven guilt, as it has been held

by the authority that the charges being serious in nature, his continuance in service would be highly prejudicial in the interest of public service.

Consequently, we hold that on this ground also, there is no scope or reason for interference by us in the connected matter.

So, having examined the entire materials available on record, we find that in the instant case, there is no scope for interference by us. We therefore

find no merit in the instant application, and as such, the same is dismissed on contest but without any cost in the circumstances of the case.

4. On a bare reading of the impugned order, it appears that learned Tribunal below did not commit any illegality for which the Writ Court should

interfere. From the impugned order, it appears that a departmental proceeding was initiated against a police officer for his involvement in two

criminal cases - one Bharatpur P.S. Case No.2 dated 20th June, 1988 under sections 148/149/326/506 of IPC and other case being Bharatpur

P.S. Case No.78 dated 15th November, 1994 under sections 147/148/149/323/324/427/307 of IPC read with section % of ES Act. The said

Bharatpur P.S. Case No.2 was compromised and writ petitioner was acquitted. So far as the subsequent criminal case being Bharatpur P.S. Case

No. 78 dated 15th November, 1994, the same was culminated to a criminal trial being T.R. No. 725 of 2002 and on 21st January, 2011 learned

Judicial Magistrate at Kandi, District-Murshidabad acquitted the writ petitioner and released him from bail bond on the finding that prosecution

failed to prove the case beyond all reasonable doubts. The relevant portion of the finding of learned Judicial Magistrate reads such:

In view of the above facts, I am of the opinion that there is no materials on record regarding the involvement of the case persons in the alleged

offence and the prosecution has failed to prove its case beyond all doubts and in the result the prosecution case fails and it is:

ORDERED

That the accused persons are found not guilty to the charge under sections 148/323/324/427/34 IPC and acquitted u/s 248(1) Cr PC. They are

released from their respective bail bonds and set to liberty at once.

Seized articles as per charge-sheet be destroyed as per section 452 Cr PC.

5. A departmental charge memo No. 17 dated 6th February, 1999 was issued initiating a disciplinary proceeding by Superintendent of Police,

North 24-Parganas which reads such:

CHARGE

You C/3657 Khairul Alam of D.I.B. North 24-Parganas are hereby charged with misconduct, involvement in Bharatpur P.S. dist. Murshidabad

case No.2(6)88 and case No.78(11)94 and unbecoming the member of police force in that:

1) On 20.6.88 while you were posted at D.A.P. North 24-Parganas you went to your native village and involved in Bharatpur P.S. case No.2 dt.

20.6.88 under sections 148/149/326/504 IPC. You were arrested in c/ w that case and forwarded to Kandi Court dist. Murshidabad on 21.6.88

and released on bail.

2) Again on 15.11.94 you were involved in Bharatpur P.S. dist. Murshidabad case No. 78/94 dt. 15.11.94 under sections

147/148/149/323/324/427/307 IPC and 3/4 E.S. Act. You were arrested in c/w that case and forwarded to Kandi Court on 21.11.94. You

were remanded to J/C till 26.11.94.

You are hereby directed to state in writing within 7 days from the date of receipt of the charge as to whether you plead guilty to the charge in full or

part thereof or want an open enquiry.

The statement of allegation on the basis of which the charge has been framed is annexed herewith.

6. Statement of allegation of said departmental proceeding reads such:

Statement of allegation

On 20.6.88 while the Constable-3657 Khairul Alam was posted at DAP North 24-Parganas he went to his village an involved in Bharatpur P.S.

Case No. 2 dt. 20.6.88 under sections 148/149/323/504 IPC. He was arrested in c/w that case and forwarded to Kandi Court, district

Murshidabad on 21.6.88 and released on bail.

2. On 15.1.94 the Constable was involved again in Bharatpur P.S. dist. Murshidabad case No. 78/94 dt. 15.11.94 under sections

147/148/149/323/324/427/307 IPC and 3/4 E.S. Act. He was arrested in c/w that case and forwarded to Kandi Court on 21.11.94. He was

remanded to J/ C till 26.11.94.

P.W.s to be examined

1. SI R.P. Maitra, O/C Bharatpur PS dist. Murshidabad on 20.6.88.

2. SI Kamal Krishna Das of Bharatpur PS dist. MSD. on 4.7.88.

3. Kamruddin Sk., S/4 Rahim Sk. Vill : Jhikira, PS: Bharatpur, dist. Murshidabad.

4. SI M. Haque of Bharatpur P.S. dist Murshidabad on 15.11.94.

5. Nidhiram Hazra, S/o. Bhakti Bhusan Hazra, Vill: Jhikira, PS: Bharatpur, dist. Murshidabad.

And any other witnesses if required during enquiry. List of documents.

1. RTM dt. 21.6.88 of O/C Bharatpur PS dist. MSD.

2. FIR of Bharatpur PS case No. 2(6)88.

3. Report of SI K.K. Das of Bharatpur PS dt. 4.7.88

4. Report of SI M. Haque O/C Bharatpur PS dt. 25.2.97.

5. FIR of Bharatpur PS case No.78(11)94.

And any other documents if required during enquiry.

7. The writ petitioner replied the charge memo and participated in the disciplinary proceeding. There was no breach of principle of natural justice

or breach of statutory provision of law to conclude the departmental proceeding. A final order was passed by the disciplinary authority dismissing

the writ petitioner from police service. The final order reads such:

Final Order in connection with North 24 Parganas district proceeding No. 1700 dated 06.02.1999 drawn up against Constable No. 3657 Khairul

Alam of North 24-Parganas.

Constable 3647 Khairul Alam of South 24-Parganas (Illegible) member of the Police force in that (Illegible) 1.

2. Again on 15.1.94 he was involved in c/w Bharatpur PS Dist: Murshidabad Case No. 1894 dated under sections

147/148/149/323/324/427/307 of IPC read with section % of ES Act. He was arrested in c/w that the case and forwarded to Kandi Court on

21.11.94. He was remanded to Jail Custody till 26.11.94.

3. The charge was drawn up by Shri Kuldip Singh, IPS, the then Superintendent of Police North 24 Parganas on 06.12.99. The file was endorsed

by then SP, North 24-Pamas to Shri Kumud Shankar Chatterjee, ICCR Doltala for enquiry and submitting findings later on the Endorsed to Shri

Durgadas Chatterjee, RI Barrackpore on by Shri Kuldip Singh, the then SP North 24 Parganas for enquiry an submitted findings. Subsequently

the file was endorsed to Shri B.M. Mondal Inspector (LA North 24-Parganas) by the SP on 30.10.2..... for enquiry and submitted findings.

The charged Constable Khairul Alam revived the copy of charge statement.....(Illegible) on 11.02.99.

During enquiry the EO examined 4 (four) PWS and cited 5 (five) documents as exhibits. The charged constable failed to produce the list of

defence witnesses. The charged constable expressed his willingness to submit his written statement of defence in c/w the instant proceeding drawn

up against him.

The EO submitted his findings in c/w the instant proceeding wherein he stated that the charges levelled against the charged Constable 3457 Khairul

Alam were proved. He received the copy of findings on 22.10.2001.

In the meantime the charged constable moved the S.A.I. WB vide OA No. 1631 of 2001. As conveyed through the letter dated 10.12.2001 of

the learned Advocate of the petitioner Shri Mohammed Idrish of the Hon''ble High Court. Calcutta it could be learnt that the date for further

hearing of the matter was fixed on 22.10.2002. The disciplinary authority was directed though the said Advocate''s letter not to take any

adversement decision against the petitioner till the further order is passed by the Hon''ble State Administrative Tribunal, Bikash Bhaban, Salt Lake

City, Kolkata. Lastly the matter was dismissed for default by the Hon''ble SAT on 12.11.2002. Since the case is dismissed an earlier interim order

of the SAT does not remain in force since I feel that there be no bar in passing Final Order in the instant proceeding.

I went through the relevant documents of the instant proceeding including the charge statement of allegations statement of PWs and relevant

documents connected with the departmental proceeding carefully.

I find that the charge levelled against the charged constable No.3467 Khairul Alam have been proved.

I called the charged constable for my personal hearing.....(Illegible) in my office Doltala Police Lines Barasat through R.T. Message addressed

PS Bharatpur Dist: Murshidabad vide this office org. No.415R dated 26.04.2003 Org. 43 RO (D) dated 2904 but the charged constable did not

appear on my personal hearing on those dates.

The charged constable submitted a petition dt. 01.05.03 addressed to the undersigned praying for 4 (four) weeks time from 02.05.2003 the date

fixed for my personal hearing.

The file was put up before me on 18.05.2003. It appears from the report of the Addl. SP DIB that the charged constable has been absconding

from his place of duty. Warning notice was sent to the charged constable at his home address vide this office Memo No. 3(x) RO dt. 20.5.03

directing the constable to resume his duty by 23.5.03 failing which ex-parte final order would be passed.

The charged constable vide his petition dated 23.05.03 informed the office of the undersigned that he has already prayed for 04 (four) weeks time.

Now he prays for further 2(two) weeks time. Seen his petitioner on 27.5.03 and his prayer is rejected.

The charged constable was given enough opportunity for hearing..... personally but he is reluctant to avail himself of the lawful opportunity

and even did not like to carry out the orders of his appropriate authority.

The charges levelled against the charged constable 3657 Khairul Alam are serious in nature and his continuance in service is highly prejudicial to

the interest of public service and dismissal is the only punishment for such type of charges.

However, I want to give an opportunity to the charged constable to show cause within 5 (five) days of receipt of this provisional final order as to

why he should not dismissed from service in default of which final order would be passed.

The charged Constable received the copy of the Provisional final Order on 07.06.2004.

The file was put up before me on 12.06.03. The charged constable did not submit his reply to the show cause notice within the stipulated period of

time.

The charges are serious in nature and dismissal is the only punishment for such type of offences.

Hence the provisional final order of dismissal is made final.

I dismiss Constable 3657 Khairul Alam of North 24-Parganas district now posted at DIB, North 24-Parganas from service with immediate effect.

He is directed to deposit his appoint Certificates. Govt. Kits and other Govt, properties kept with him as per his official capacity as Constable to

the concerned units of his department.

His period of suspension from 20.06.1988 AM to 06.10.1988 PM and from 12.01.1995 PM to 13.09.1995 PM vide DOD No. 472 dt:

24.06.88, DOD No. 778 dt: 06.10.88 DOD No. 24 dt: 12.01.95 and DOD No. 542 dt: 11.09.95 confirmed, He remained in Jail custody from

21.11.94 to 20.11.94. He will get nothing while he was in jail custody excepting Rs. 1 (one) as token money.

He will get nothing except GI & GPF money Overdrawal if any should recovered forthwith.

8. Assailing the said final order, original application was moved. It is the contention of the writ petitioner that involvement in two criminal cases

which were the subject matter of disciplinary proceeding, ended in acquittal, as such the authority had no jurisdiction to pass the order of dismissal

in the disciplinary proceeding. It appears that disciplinary proceeding was initiated on 6th February, 1999 and before the first criminal case was

compromised, but second criminal case was pending for adjudication by the competent criminal Court, who delivered judgement on 21st January,

2011.

9. Learned Advocate for the writ petitioner has contended that continuation of departmental proceeding and imposition of punishment, during

pendency of second criminal proceeding was bad in law. We are not finding any merit in this argument. It is a settled legal position of law that a

criminal proceeding and departmental proceeding even on identical fact and identical witnesses could be proceeded with simultaneously and there

is no embargo of completion of departmental proceeding, even if somebody is acquitted from criminal proceeding. The reason behind such

principle is based on by considering the differences on degree of proof, namely in a criminal proceeding, it requires higher degree of strict proof

and failure of it, ""benefit of doubt"" principle could be applied by the criminal Court. But in a departmental proceeding the degree of evidentiary

value to prove the charge is not. of such high standard as of criminal trial. Mere preponderance of probability, would suffice to prove charge. A

criminal proceeding is initiated for a remedy against the wrong committed to the society and offence is triable in a criminal Court to impose penalty

of imprisonment to jail or fine, whereas in a disciplinary proceeding the conduct of the delinquent is adjudged/ considered by the disciplinary

authority to conclude whether such conduct would come under the contour /parameter of misconduct, specified in Service Rules, for imposition of

penalty as prescribed. It appears from the charge memo that involvement of writ petitioner who was in police service, a disciplined force, in two

criminal cases became the subject matter of disciplinary proceeding to identify his misconduct under the Service Rules. The acquittal in the first

criminal case was only by reason of filing of application to compound the offences and on the basis of such, the criminal court dropped the

proceeding and writ petitioner was acquitted. Such acquittal cannot be an embargo to proceed with disciplinary proceeding framing the charge as

made. During pendency of second criminal proceeding, the departmental proceeding was concluded and punishment of dismissal was passed. In

this writ application only two issues are required to be considered, namely,

(1) Whether a charge memo could be issued in a disciplinary proceeding relating to involvement of writ petitioner in the first criminal case

wherefrom he was acquitted due to application for compounding offences and departmental proceeding could be concluded on that charge.

(2) Whether the charge memo relating to involvement in second criminal proceeding which was pending could be the subject matter of any

disciplinary proceeding and prior to judgement passed in the said criminal proceeding when dismissal order was passed by concluding the

departmental proceeding, whether such dismissal order could be quashed or set aside.

10. Let us consider the first issue, namely, whether after acquittal from a criminal proceeding, a departmental proceeding could be initiated relating

to charge which was the subject matter of criminal proceeding. This issue was answered in the case Ajit Kumar Nag Vs. General Manager (P.J.),

Indian Oil Corporation Ltd., Haldia and Others, , a judgement of 3-Judges Bench, wherein in paragraph 11 it is held that there is no bar to initiate

a disciplinary proceeding even after acquittal from criminal proceeding. The judgement was delivered on considering the principle of law about

differences in nature of two proceedings, as discussed above.

11. In the instance case, it appears that a police constable was involved in a criminal case as an accused and first criminal case did not end by full-

fledged trial, but it was compounded. Compounding of an offence does not mean hon''ble acquittal from criminal proceeding.

12. So far as the second point is concerned, namely, during pendency of second criminal proceeding, involvement of writ petitioner holding the

post of constable in police service, could be the subject matter of disciplinary proceeding on the charge as levelled and whether punishment of

dismissal from service, could be considered as bad in law. To answer that point, the principle of law, having regard to differential nature of two

proceedings, that there should not be any embargo for simultaneous continuation of said proceedings, at the same time could be applied. The

initiation of disciplinary proceeding on the charge as levelled cannot be said as bad in law. In the case Depot Manager, Andhra Pradesh State

Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., , a judgement of 3-Judges Bench, in paragraph 8, held as follows:

8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct

aspects. The criminal prosecution is launched for an offence for violation of duty, the offender owes to the society or for breach of which law has

provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty.

The departmental enquiry is to maintain discipline in the service efficiency of public service. It would, therefore, be expedient that the disciplinary

proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules

in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to

be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry

and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicate questions of fact and law. Offence generally

implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is

conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is

the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish

him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands

excluded is a settled legal position. The enquiry in the departmental proceedings related to the conduct of the delinquent officer and proof in that

behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as

to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely

different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human

conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence is also is different from the

standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these

circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in

a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have

seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under sections

304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings.

13. The view expressed in Yousuf Miya (supra) relied upon by the Court subsequently in the case State Bank of India and Others Vs. R.B.

Sharma, . From the charge as framed against the accused in the two criminal proceedings and the charge memo of disciplinary proceeding, it

appears that there was no question of arising conflicting decisions as the subject matter of charge in two different proceedings were different. In the

disciplinary proceeding only issue involved as to whether a constable working in a disciplinary force when was involved, as alleged in two criminal

proceedings, could be retained in service by making proper adjudication of his conduct to reach the conclusion that such conduct was misconduct

under the Service Jurisprudence. It is employer who is the best person to decide whether for certain mis-conduct, a person should be dismissed or

discharged.

14. As observed by learned Tribunal below that there was no grievance about breach of natural justice or breach of statutory provision, to

conclude the disciplinary proceeding. Before us, nothing has been whispered on that point, save and except the legal question that once somebody

is acquitted even if on application of compounding of offence under Criminal Procedure Code, departmental proceeding ought not to have been

initiated on charge of involvement in that criminal case and further on the point that when second criminal proceeding was pending, the same ought

not to have been the subject matter of a charge memo in a departmental proceeding wherein writ petitioner suffered order of dismissal from

service. Learned Tribunal below answered those in a cryptic manner but we have in details discussed the law in that field.

15. Having regard to the aforesaid finding, we are not finding any merit to disturb the impugned order passed by learned Tribunal below.

The writ application accordingly stands dismissed. There will be no order as to costs.

Mrinal Kanti Chaudhuri, J.

I agree.