

UNION OF INDIA AND OTHERS

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v.

NAMAN SINGH SEKHAWAT
(Civil Appeal No. 140 of 2007)

MARCH 14, 2008

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(S.B. SINHA AND HARJIT SINGH BEDI, JJ.)

Service Law:

*Misconduct – Sub-Inspector working in Intelligence Bureau allegedly indulging in smuggling activities – Initiation of departmental proceedings – Criminal proceedings also initiated against him for committing offences punishable u/ ss. 409, 120B I.P.C., s.13(2) of the Foreigners Act and s. 27 of the Arms Act, resulting in acquittal of accused/delinquent – Departmental authorities dropping charges against him as not proved – Initiation of another departmental proceeding against him on the same ground after lapse of 9 years – Dismissal from service – Reversed by Tribunal – Appeal against, dismissed by High Court – Correctness of – **Held:** Correct – Delinquent exonerated by the authorities and the Criminal Court – Initiation of departmental proceedings by the authorities after lapse of nine years has not been explained – Imputation of misconduct, after exoneration by authorities/ Criminal Court, is beyond anybody's comprehension – Bias on the part of inquiry officer explicit from the record – I.O. and consequently the disciplinary authority misdirected themselves in law as they posed themselves a wrong question – Principles of natural justice not complied with in the departmental proceedings – Disciplinary authority differed with the findings of the authorities and criminal Court without assigning any reasons – Though departmental proceeding permissible after recording of the judgment of acquittal by a criminal Court but it must be initiated bonafide – Evidence of driver of jeep, an eyewitness, is totally against the department*

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- A – Neither he was cross-examined nor it was held that he deposed falsely – Hence, there is no infirmity in the impugned judgment warranting any interference – Initiation of departmental proceedings against delinquent after acquittal in criminal proceedings – Permissibility of – Central Civil Service (CCA) Rules, 1965 – r.14.

Disciplinary proceedings – Renders to nullity – Held:
When Inquiry Officer is biased.

- Respondent was working as Sub-Inspector in the Intelligence Bureau. His job was to collect information in regard to anti-national activities. One day, while he was carrying the seized smuggled goods for delivering them to the customs authorities, he was intercepted by the Police and arrested on the charge of carrying the smuggled goods in collusion with a smuggler in his official jeep. Accordingly, a criminal proceeding was initiated against him for commission of offences punishable u/ss. 409 and 120B I.P.C. r/w s. 13(2) of the Foreigners Act; s. 27 of the Arms Act and s.110 of the Customs Act. In the departmental proceeding initiated against him, the authorities came to a finding that there was no evidence on record to establish involvement of respondent in the alleged crime. It was directed by the authorities to confiscate the goods so carried by the respondent dropping charges levelled against him and others. In the criminal proceedings, charges were not proved against him and a judgment of acquittal was recorded against him and other officials accompanying him in the jeep. No appeal was preferred by the authorities/ Union of India. However, later, a second disciplinary proceeding was initiated against him, which was allegedly not conducted properly, and as a result of the proceedings, the Inquiry Officer found him guilty of the charges of misconduct levelled against him. He was dismissed from the service. Appeal filed thereagainst was dismissed by the appellate authorities. Aggrieved from the

order of the appellate authority, respondent filed an Original Application before the Central Administrative Tribunal. The Tribunal directed the authorities to reinstate him in service with all consequential benefits. A writ petition filed thereagainst was dismissed by the High Court. Hence the present appeal.

It was contended by the Union of India and Others that the Tribunal and the High Court committed a serious error in passing the impugned judgments in so far as they failed to take into consideration that it is permissible for the disciplinary authority to initiate a departmental proceeding even after the judgment of acquittal is recorded in a criminal case inasmuch as similar evidence can be viewed differently by the criminal court and an inquiry officer having regard to the standard of proof involved in the respective proceedings; that the criminal court having acquitted the respondent only on benefit of doubt, the departmental proceeding was maintainable; that in any event, the charges levelled against the respondent in the criminal case and the departmental proceeding were different; that the High Court, although noticed the legal principles operating in the field correctly, failed to apply the same to the facts of the present case; and that the Tribunal committed a serious illegality in opining that a preliminary inquiry was required to be conducted after the judgment of acquittal was passed.

Respondent-employee submitted that the Customs Authorities as also the Judicial Magistrate having held that he was not guilty of the charges, the impugned judgment is unassailable; that he being the Officer Incharge of the Unit, was entitled to take all such actions which were necessary to act as an Intelligence Officer; that the witness who could have proved that the smugglers were the target of the respondent, having not been examined, the Principle of Natural Justice was violated; that as an Incharge of the office, he indisputably was entitled to use

A the government vehicle as also the arms; and that the finding recorded by the disciplinary authority was wholly perverse.

Dismissing the appeal, the Court

B HELD: 1. Initiation of the departmental proceeding must be viewed in the background of total exoneration of the respondent-employee by the Customs Authorities and the Criminal Court. (Para – 19) [154-B]

C 2.1 Trans-border smuggling is a subject of federal function. This Court failed to understand as to why no deeper probe was made in regard to his involvement of the delinquent, if any, vis-a-vis the role of the officers of the concerned police station. Larger public interest demanded such probe. If the contention of the appellant D was correct, the competent authority of the Central Government should have taken up the matter with the State Government. Such inaction on the part of the appellant is a matter of deep public concern. (Para – 21) [154-E-G]

E 2.2 If the charges levelled against the respondent in the departmental proceeding only related to administrative lapses on his part, it could have been initiated long back. Why was it initiated after a period of nine years has not been explained. (Para – 22) [154-G]

F 2.3 The identity and the activity of the private person, who was found in the company of the respondent, should have been investigated by the competent authority, particularly when respondent was working in the Intelligence Department. (Para – 22) [155-B]

G 2.4 The Department of Customs of the Union of India having examined the entire question, they found the respondent innocent. As trans-border smuggling was the common theme both before the said authority as also in H the criminal court, the department concerned was

expected to keep a strict vigil thereover. The question of mis-utilisation of jeep etc., was not brought to the notice of the Customs Authorities. Such a question was also not raised in the criminal proceeding. It was necessary to do so so as to prove the charges of conspiracy. The prosecution, thus, utterly failed to prove such a charge. (Para – 23) [155-C-E]

2.5 In the departmental proceeding the appellant was bound to comply with the principles of natural justice. Copies of some documents were not supplied. Services of a legal practitioner, may not be a matter of right, but the delinquent was atleast entitled to the effective assistance of the departmental representative. The same was also for all intent and purport denied. (Para – 24) [155-E, F]

2.6 The appellate authority did not consider the legal question that the Inquiry Officer was bound to take recourse to Rule 14 of the CCS (CCA) Rules particularly when, apart from the orders of the Customs Authorities and the criminal case, no other evidence appears to have been brought on record. No reason has been assigned as to why the request of the respondent to call one 'J' as defence witness to prove the bonafide of the respondent had been turned down. (Para – 26) [156-D, E]

2.7 The bias on the part of the Inquiry Officer is explicit from the record. Why the Inquiry Officer cross-examined the respondent is beyond anybody's comprehension. He was not the prosecutor. A Presenting Officer had been appointed. The Inquiry Officer could not have taken over the job of the Presenting Officer, particularly when he was a superior officer. Valid and sufficient reasons have not been assigned by the Inquiry Officer in this behalf. His finding that the respondent should have informed his superior who was available at the close point, is contrary to the evidence of the driver of the official jeep. (Para – 26) [156-E-G]

A 3.1 In regard to the suggestion before this Court that
the charges against the respondent in the criminal case
and the departmental proceeding were different, this
Court failed to understand what sort of public duty the
B respondent was expected to perform when he was
intercepted by the police in a jeep which was driven by a
notorious smuggler who had been detained under MISA.
If the conduct of the respondent did not cause any
embarrassment to the department in the year 1983, how,
after exoneration by the Customs Authorities and acquittal
C by the criminal court, his acts embarrassed the
department, so as to form the basis of imputation of
misconduct, is beyond anybody's comprehension.
(Para – 27) [157-A, B, C]

D 3.2 The Inquiry Officer and consequently the
disciplinary authority misdirected themselves in law as
they posed unto themselves a wrong question. The
appellate authority's findings had not been considered at
all. (Para – 27) [157-C]

E 3.3 The disciplinary authority for all intent and
purport, differed with the findings of the Customs
Department as well as the criminal court, but no basis
therefor was disclosed. No such evidence was brought
on record. No witness was examined to prove the said
fact. Even no documentary evidence was produced. The
F entire basis of the said finding is the *ipse dixit* of the
Disciplinary Authority and the Appellate Authority.
(Para – 27) [157-D, E]

G 4.1 Initiation of departmental proceeding is
permissible even after the judgment of acquittal is
recorded by the criminal court. But the same would not
mean that a proceeding would be initiated only because
it is lawful to do so. A departmental proceeding could be
initiated if the department intended to adduce any
H evidence which is in its power and possession to prove

the charges against the delinquent officer. Such a proceeding must be initiated bona fide. The action of the authority even in this behalf must be reasonable and fair. (Para – 28) [157-G, H; 158-A] A

T.N.C.S. Corporation Ltd. and others vs. K. Meerabai (2006) 2 SCC 255 – relied on. B

4.2 An acquittal of a delinquent ipso facto may not absolve him from undergoing disciplinary inquiry. However, where the charges are absolutely identical, ordinarily the same would not be resorted to. (Para –30) [158-G, H] C

Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and others (2005) 7 SCC 764 – relied on.

5.1 If the Inquiry Officer is biased, no action could have been taken on the basis thereof. It renders the proceeding a nullity. Such an inherent defect in the disciplinary proceeding cannot be cured by an order of the appellate authority. An order which is void cannot be validated by the appellate authority as the materials which were not brought on record could not be taken into consideration by it. (Para – 30) [159-A, B] D

5.2 It is not a case where a mere benefit of doubt had been given to the respondent in the criminal proceeding. The criminal court has given a positive finding that the prosecution has not been able to prove that the accused had misappropriated the goods. His visit to the border for discharging his duties did not tantamount to misuse of the post or the authority. No evidence has been presented that he did not have the authority to go to the border side on official duties and even the department had not forbidden him from going to that place. (Para – 32) [160-D, E] E

5.3 No evidence had been adduced to bring home H

A the charge of criminal conspiracy, which is an independent crime. (Para – 32) [160-G]

B 5.4 Evidence of driver of the official jeep is totally against the department. He was not cross-examined. It was not held that he had deposed falsely. (Para – 36) [162-E]

C 5.5 Respondent was found to have been carrying the official revolver for his safety. No evidence was also adduced to establish that when confronted by the police party, he had tried to show or used the same or threatened them with the same or used the official revolver with the intention of doing illegal work. The respondent was allotted a jeep and also allowed to carry with him the official revolver, was accepted by the prosecution side in the criminal case, and thus, he was found not guilty under D Section 27 of the Arms Act. (Para – 33) [162-E]

E *Sawai Singh vs. State of Rajasthan* (1986) 3 SCC 454; *Jasbir Singh vs. Punjab & Sind Bank and others* (2006) 11 SCALE 204 and *M.V. Bijlani vs. Union of India and others* (2006) 8 SCC 8 – relied on.

F 6. The respondent is directed to be reinstated forthwith with all consequential benefits. The order of the Tribunal must be complied with in its entirety forthwith. (Para – 38) [162-G]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 140 of 2007.

G From the final Judgment and Order dated 01.09.2005 of the High Court of Rajasthan, Jaipur Bench in D.B. CWP No. 5928 of 2001.

Vikas Singh, ASG, A.K. Srivastava, Shiva Lakshmi, Adita Singh, Sushma Suri and Ritu Bhardwaz for the Appellants.

H Sushil Kumar Jain, Mahendra Shah, Puneet Jain, H.D. Thanvi and O.P. Gaggar for the Respondent.

The Judgment of the Court was delivered by

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S.B. SINHA, J. 1. Respondent at all material times was working as a Sub-Inspector (AICO-II). He was posted in the Intelligence Bureau. His principal function was to identify and collect sources of information from the locality in regard to anti national activities.

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2. On or about 5th August, 1983, the respondent accompanied by the driver of an official jeep bearing Registration No. RSN – 939, went to a place known as 'Ramsar Gagaria Road' in the District of Barmer. There, he allegedly found a large number of smuggled goods. While bringing the same in his jeep for their delivery to the Customs Authorities it was intercepted by a Jonga Jeep, which was being driven by one Bhoor Singh, a known smuggler, accompanied by the Head Constable Bhoori Das and Constable Kirta Ram of the concerned Police Station. They were brought to the Police Station and arrested inter alia on the charge that the respondent, in conspiracy with the smugglers had been taking the smuggled goods in his official jeep.

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3. Proceedings under the Customs Act were initiated on the basis of the First Information Report lodged by the said Head Constable. A Criminal proceeding was also initiated against him for the alleged commission of offences under Sections 409, 120-B of the Indian Penal Code read with Section 13(2) of the Foreigners Act and Section 27 of the Arms Act as also under Section 110 of the Customs Act.

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4. In the proceeding under Section 112 of the Customs Act, the defence of the respondent inter alia was that, finding some smuggled goods stranded and abandoned while he was on a tour from near Village Gagaria, he loaded the same in the said Jeep No. RSM-939 for necessary action in relation thereto by the Customs Authorities. However, in the meantime, they were intercepted by the police authorities.

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5. The driver of the vehicle Mool Singh supported the said

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A contention of the respondent. The Additional Collector, Customs and Central Excise, upon consideration of the materials on record by the parties thereto held :-

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“15.In his statement dated 20.8.2083 recorded under Section 108 ibid, Shri Mool Singh has corroborated the facts outlined by Naman Singh in his statement dated 20.8.1983. No independent evidence has been brought on record to show Shri Mool Singh's involvement in smuggling activities separately. Both S/Shri Naman Singh and Mool Singh in their statements recorded under Section 108 have stated that they were intercepted by the Police Officers who were sitting in a Jonga Jeep, being driven by one Bhoor Singh, a known smuggler on the Indo-Pak Border. However, in the records of the case, there is no mention about the particular Jeep in which the Police Offices were traveling and who was driving the jeep. This aspect has not been clarified even in the show cause notice. In view of this statement, the Jeep number in which the Police officers were traveling should have been obtained by the Investigating Officers particularly when an allegation has been made against the very officers who had made the seizure that they were traveling in a Jonga Jeep belonging to a well known smuggler of the area.

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16. Thus there is no evidence on record to indicate that the goods under seizure belong to either S/Shri Naman Singh or Mool Singh or Narain Singh, who were present in the jeep when the goods were seized. There is no evidence also that they had acquired goods through unauthorized route. Further, there is no evidence against Shri Latif S/o. Bheru Musalman that he was in anyway concerned with the goods under seizure. Thus, the theory given by the Police that the I.B. Officers and Narain Singh (a private person) were indulging in smuggling of goods in a Govt. Jeep does not hold any water, particularly when in their statements S/Shri Naman Singh and Mool Singh have clearly indicated that the Police Officers were

traveling in Jonga Jeep belonging to Bhoor Singh, a well known smuggler of the area and Investigations have not been made either by the Police or the Customs authorities either to deny or to confirm this serious allegation. In the circumstances, on the contrary there is no reason to disbelieve that the I.B. Officers on tour found certain goods of foreign origin which they loaded in their vehicle to be taken to the nearest Customs Offices for necessary action and they were intercepted by the Police Officers, who were sitting in a private Jonga Jeep being driven by a notorious smuggler of the area, a fact which has not been denied or disputed. I, therefore, hold that the ownership of the goods under seizure cannot be attributed to S/Shri Naman Singh, Mool Singh, Narain Singh and Latif to whom the show cause notice has been issued. There is no evidence on record to indicate their involvement in the smuggling of foreign origin goods from Pakistan into India."

On the basis of the aforesaid findings, whereas the goods of the foreign origin were directed to be confiscated, the charges against the respondent, Mool Singh and one Latif were dropped.

6. In the criminal proceeding against the respondent, the prosecution examined a large number of witnesses including the informant Bhoori Das, PW-6 and Constable Kirta Ram, PW-7. The charges were found to have not been proved. It was inter alia held that no case under Section 409 of the Indian Penal Code had been made out as the respondent was not entrusted with the said goods. In regard to the charge under Section 27 of the Arms Act, no offence was found to have been committed by the respondent, as he was in possession of an Arm to which he was entitled to. So far as the charge under Section 120-B of the Indian Penal Code is concerned, a judgment of acquittal was recorded stating :-

"As elaborated earlier, when the basis of presenting prosecution has not been considered reliable by Department of Custom and the statement of the accused

A is considered to be more reliable, under such
circumstances it cannot be considered the accused has
misappropriated in this matter as visit by the employees
of Intelligence Bureau on the border for discharging their
duties does not tantamount to misuse of the post or the
B property and no such evidence has been presented that
the accused Naman Singh did not have the authority to go
on border side for official work and even the department
had not forbidden him from going that place. Due to want
of above facts it can be presumed that he visited the place
C for official work. As the misappropriation of the property is
not proved, therefore, the question of criminal conspiracy
does not arise. Apart from this, the crime of criminal
conspiracy is an independent crime. No evidence from
the prosecution side for this has been submitted."

D 7. The State accepted the said judgment. No appeal was
preferred thereagainst. Long thereafter, namely on 1st May,
1982, for reasons best known to the appellant, a disciplinary
proceeding was initiated against the respondent on two articles
of charges which read as under :-

E (a) During his posting at Barmer, Rajasthan in 1983, the
Respondent had mis-utilized a Government vehicle
and revolver for an unauthorized tour of the border
area falling under PS Ramser outside the
requirement of his official duties, without the
F knowledge or permission of his superior officers.

(b) Unauthorisedly collected and carried smuggled
articles in the Government jeep which was an act
unbecoming of an intelligence officer and constituted
gross professional misconduct.
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8. In the said departmental proceeding the police officers
concerned were not examined. The Customs Officers were also
not examined. No official on behalf of the department was
examined, except the aforesaid Mool Singh. Mool Singh, in his
H evidence, fully supported the case of the respondent. He stated

that the predecessors of the respondent also used to carry on similar duties and functions. He also disclosed that another officer, who had been requested to accompany them, refused to do so. He also stated that in similar situations, recovered smuggled goods had been handed over to the Customs Authorities. He also referred to an instance in regard to a similar incident which took place during the tenure of Shri D.L. Oza, CDIO.

9. Admittedly, Bhoor Singh who was driving the Jonga Jeep was in inebriated condition. He is also said to be the owner of the vehicle. How responsible police officers were traveling in the jeep of a well known smuggler defies all logic.

10. Respondent intended to examine one witness in the departmental proceedings, Jumma. He was not permitted to do so. During the course of the disciplinary proceedings his Defence Assistant was not available. A request was made to allow him to attend the enquiry proceedings. The said request was not acceded to.

11. The Inquiry Officer, however, by his report dated 9th December, 1982, found the respondent guilty of the charges of misconduct leveled against him.

12. The Disciplinary Authority passed an order of dismissal on 2nd February, 1993. The only reason assigned in support thereof reads as under:-

"Therefore, on due appreciation of the inquiry report furnished by the Inquiry Officer and representation against it made by the charged officer, I feel that the charges leveled against the delinquent government servant have been duly established. I being the Disciplinary Authority, dismiss Shri N.S. Shekhawat, ACIO-II (G) from the service with immediate effect, under Rule 11 (ix) of CCS (CC&A) Rules, 1965."

13. An appeal was preferred thereagainst. The appellate authority dismissed the said appeal by a detailed judgment dated

A 17th April, 2000, stating:-

B "6. That I, JD, SIB, Jaipur being the Appellate Authority after carefully examining the appeal preferred by Sh. N.S. Shekhawat, dismissed ACIO-II, the Inquiry Report submitted by the Inquiry Officer (Shri Bhagirath Mina, the then Assistant Director, Jodhpur), the order of the Disciplinary Authority (i.e. Shri Ram Das, Assistant Director, SIB, Jaipur), and other relevant documents on record have found :-

C (i) That Rule 14 (15) of the CCS (CCA) Rules , 1965 provides that the Inquiry Officer, in his discretion, can call for new evidence in case he feels that there is an inherent lacuna in the evidence produced before him and that production of such evidence is necessary in the interest of justice. Accordingly, the Inquiry Officer was well within his rights to call Shri Mool Singh, JIO-II (MT) for deposition.

D (ii) That the request of Shri N.S. Shekhawat for engaging a legal practioner as his defence assistant was rightly turned down, as the Presenting Officer was not a legal practitioner nor were there any special circumstances under which the delinquent could be allowed to engage a legal practitioner.

E (iii) That it is also revealed from the records of the inquiry that proper summons were issued to the defence assistant viz., Shri Madhukar Sharma, Spd. (PREV), Customs and Central Excise, Ajmer and to his Controlling Officer viz., the Collector, Central Excise and Customs, Jaipur, requesting him to relieve Shri Sharma for attending the disciplinary proceedings, but he did not turn up at the enquiry.

F (iv) That the request of the delinquent officer to produce one Jumma as his defence witness was rightly turned down as there was no relevance in his deposition.

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- (v) That the C.O. was given full opportunity to defend himself. A
- (vi) That from the records of the departmental proceedings, it is conclusively proved that the visit of Shri NS. Shekhawat to the border area near Village Ramsar (District Barmer) on the night of August 5, 1983 was unauthorized, during which he was detected and intercepted by the local police for unauthorisedly carrying smuggled goods 530 electronic calculators, Made in Japan, 19 Sanyo tape-cum-transistors, Made in Japan, 57 'thans' measuring 1767 mts. of synthetic fabric of 'Pak' origin; which were valued at Rs. 1 lakh 30 thousand at that time in the official governmental jeep of IB beyond any conceivable call of his legitimate duties. In his deposition dated Oct. 22, 1992 before the I.O., Shri Shekhawat has admitted having visited the area near Village Ramsar, District Barmer without the knowledge/authority of his Senior Officers for undertaking such a tour which certainly required the permission of the controlling officers at Jodhpur/ Jaipur. B
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- (vii) That there is nothing on record to indicate that the proceedings were not conducted as per the procedure laid down under CCS (CCA) Rules, 1965." F

14. Respondent preferred an Original Application before the Central Administrative Tribunal, Jaipur Bench questioning the said order of the disciplinary authority. By a judgment and order dated 23rd October, 2001, the Tribunal, upon considering the material at some details, held :- G

"In the instant case, there is no evidence to corroborate the charge against the applicant. The case of applicant is solely or mainly depend on the statement of Shri Mool Chand, (sic) who does not support the charges at all. Criminal Court has already acquitted the accused on the H

A basis of no evidence. In support of the allegations against the applicant, no preliminary enquiry was conducted in this case. Therefore, we are of the considered opinion that there is no evidence on record to sustain the charges against the applicant and it is a case of no evidence.

B Therefore, the finding of the Inquiry Officer can be characterized as perverse."

Respondent, on the basis of the said findings, was directed to be reinstated in service with all consequential benefits.

C 15. A Writ Petition preferred thereagainst has been dismissed by a Division Bench of the Rajasthan High Court by reason of the impugned judgment.

D 16. Mr. Vikas Singh, learned Additional Solicitor General, appearing on behalf of the appellant would submit that the Tribunal and the High Court committed a serious error in passing the impugned judgments in so far as they failed to take into consideration :-

- E 1) it is permissible for the disciplinary authority to initiate a departmental proceeding even after the judgment of acquittal is recorded in a criminal case inasmuch as similar evidence can be viewed differently by the criminal court and an inquiry officer having regard to the standard of proof involved in the respective proceedings ;
- F 2) the criminal court having acquitted the respondent only on benefit of doubt, the departmental proceeding was maintainable;
- G 3) in any event, the charges levelled against the respondent in the criminal case and the departmental proceeding were different;
- H 4) the High Court, although noticed the legal principles operating in the field correctly, failed to apply the same to the facts of the present case;

- 5) the Tribunal committed a serious illegality in opining that a preliminary inquiry was required to be conducted after the judgment of acquittal was passed. A

17. Mr. Sushil Kumar Jain, learned counsel appearing on behalf of the respondent, on the other hand, urged :-

- 1) That the Customs Authorities as also the learned Munsif-cum-Judicial Magistrate having held that the respondent was not guilty of the charges, the impugned judgment is unassailable. B
- 2) Respondent being the Officer Incharge of the Unit, was entitled to take all such actions which were necessary to act as an Intelligence Officer. Jumma who could have proved that the smugglers were the target of the respondent, having not been examined, the Principle of Natural Justice was violated. C D
- 3) No Circular or Notification has been brought on records to show that any permission from any higher authority was required before the respondent could take the official jeep for carrying out his official duties. E
- 4) As an Incharge of the office, the respondent indisputably was entitled to use the government vehicle as also the arms.
- 5) In view of the fact that the respondent had not been found guilty both by the Customs Authorities and the Criminal Court, any embarrassment on the part of the department, on account of any action of the respondent did not and could not arise. F
- 6) The only material brought on record being the orders of the Customs Authorities, the judgment of the criminal court and the evidence of Mool Singh, the finding recorded by the disciplinary authority was wholly perverse. G

18. Respondent was a responsible officer. He was H

A incharge of a unit. The charge against the respondent was that he had been found at the International Border, 100 kms. away from the place of posting, accompanied by a driver and a private person, having not been authorized by his superiors to make the said trip and the same was not in the course of his legitimate duties and that he had hatched a conspiracy with the smugglers. B He is also accused of conspiring with the foreigners.

19. Initiation of the departmental proceeding must be viewed in the background of his total exoneration by the Customs Authorities and the criminal court.

C 20. The alleged occurrence took place on 5th August, 1983. As he was arrested in connection with the said matter, he must have been placed under suspension. The proceeding under the Customs Act came to an end on 17th March, 1986. He was D acquitted in the criminal case on 11th July, 1991. The Department was aware of the said proceedings. They were aware of his defence. It has not been denied or disputed that obtaining E intelligence reports as regard anti smuggling activities was one of his functions. It is one thing to say that in discharge of the said function he was over enthusiastic but it is another thing to say that he hatched a conspiracy to assist the smugglers in carrying out smuggling activities.

21. Trans-border smuggling is a subject of federal function. We fail to understand as to why no deeper probe was made in F regard to his involvement, if any, vis-a-vis the role of the officers of the concerned police station. Larger public interest demanded such probe. If the contention of the appellant was correct, the competent authority of the Central Government should have taken up the matter with the State Government. Such inaction G on the part of the appellant is a matter of deep public concern.

22. If the charges levelled against the respondent in the departmental proceeding only related to administrative lapses on his part, it could have been initiated long back. Why was it initiated after a period nine years has not been explained. On a H query made by us, the learned Additional Solicitor General,

submitted that the department must have been waiting for the outcome of the criminal case. If that is so, it was expected that the evidence would have been adduced in the criminal proceeding to establish that the misuse of the jeep and the official revolver as also visiting the border area by the respondent formed part of conspiracy.

The identity and the activity of the private person, who was found in the company of the respondent, should have been investigated by the competent authority, particularly when respondent was working in the Intelligence Department.

23. Whether incidental or ancillary to the issue which arose in the departmental proceeding, we must place on record that the Department of Customs of the Union of India having examined the entire question, they found the respondent innocent. As trans-border smuggling was the common theme both before the said authority as also in the criminal court, the department concerned was expected to keep a strict vigil thereover. The question of mis-utilisation of jeep etc., was not brought to the notice of the Customs Authorities. Such a question was also not raised in the criminal proceeding. It was necessary to do so so as to prove the charges of conspiracy. The prosecution, thus, utterly failed to prove such a charge.

24. In the departmental proceeding the appellant was bound to comply with the principles of natural justice. Copies of some documents were not supplied. Services of a legal practitioner, may not be a matter of right, but he was atleast entitled to the effective assistance of the departmental representative, Shri Madhukar Sharma. The same was also for all intent and purport denied.

The Tribunal in this behalf opined :-

“ It is undisputed fact that Shri Mool Singh was examined although his name was not in the list of witnesses. The applicant’s request to call Shri Jumma as defence witness was not allowed. Not only this but in the absence of the

A departmental representative Shri Madhukar Sharma, the applicant was compelled to cross-examine Shri Mool Singh who was cited as main witness in this case. It is also not disputed that the Inquiry Officer himself has cross-examined the applicant which was the duty of the departmental representatives. It appears that the conduct of the Inquiry Officer in this case has been throughout biased and it appears that he has acted with predetermined notions which should have caused prejudice to the applicant.”

C We are in general agreement with the said observations.

25. Our attention has been drawn to the order passed by the appellate authority dated 17th April, 2000. It is a long order, a portion whereof we have noticed hereinbefore.

D 26. We may at this juncture notice that the appellate authority did not consider the legal question that the Inquiry Officer was bound to take recourse to Rule 14 of the CCS (CCA) Rules particularly when, apart from the orders of the Customs Authorities and the criminal case, no other evidence appears to have been brought on record. No reason has been assigned as to why the request of the respondent to call ‘Jumma’ as defence witness to prove the bonafide of the respondent had been turned down.

F The bias on the part of the Inquiry Officer is explicit from the record. Why the Inquiry Officer cross-examined the respondent is beyond anybody’s comprehension. He was not the prosecutor. A Presenting Officer had been appointed. The Inquiry Officer could not have taken over the job of the Presenting Officer, particularly when he was a superior officer. Valid and sufficient reasons have not been assigned by the Inquiry Officer in this behalf. His finding that the respondent should have informed his superior who was available at the close point, is contrary to the evidence of Mool Singh. According to him, the practice followed by the officers similarly situated was to take the goods found abandoned to the Customs Department and H to the police station.

27. It has been suggested before us that the charges against the respondent in the criminal case and the departmental proceeding were different. However, we fail to understand what sort of public duty the respondent was expected to perform when he was intercepted by the police in a jeep which was driven by Bhoor Singh, a notorious smuggler who had been detained under MISA. If the conduct of the respondent did not cause any embarrassment to the department in the year 1983, how, after exoneration by the Customs Authorities and acquittal by the criminal court, his acts embarrassed the department, so as to form the basis of imputation of misconduct, is again beyond anybody's comprehension. The Inquiry Officer and consequently the disciplinary authority misdirected themselves in law as they posed unto themselves a wrong question. The appellate authority's findings are noticed in paragraph 12 (supra) had not been considered at all.

The disciplinary authority, therefore, for all intent and purport, differed with the findings of the Customs Department as well as the criminal court, but no basis therefore was disclosed. No such evidence was brought on record. No witness was examined to prove the said fact. Even no documentary evidence was produced. The entire basis of the said finding is the ipse dixit of the Disciplinary Authority and the Appellate Authority.

It again goes to show that despite the findings of the Customs Authorities and the Criminal Court, what was uppermost in the mind of the disciplinary authority and the appellate authority was his alleged involvement in the smuggling activity.

28. There cannot be any doubt whatsoever, as has been submitted by the learned Additional Solicitor General, that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal court. But the same would not mean that a proceeding would be initiated only because it is lawful to do so. A departmental proceeding could be initiated if the department intended to adduce any evidence which is in its power and possession to prove the

A charges against the delinquent officer. Such a proceeding must be initiated bona fide. The action of the authority even in this behalf must be reasonable and fair.

B 29. Reliance has been placed on *I.N.C.S. Corporation Ltd. and others vs. K. Meerabai* : (2006) 2 SCC 255 wherein this court opined :-

C “30. The scope of disciplinary proceedings and the scope of criminal proceedings in a Court of Criminal law are quite distinct, exclusive and independent of each other. The prosecution proceedings launched against the respondent herein were in respect of offences punishable under Sections 409 and 477-A I.P.C., whereas the Departmental Proceedings as initiated against her were in respect of the charges of misappropriation and other fraudulent practices such as deliberate omission to bring into accounts the stock received showing bogus issues in the records, falsification of accounts, submission of defective accounts, tampering of records, manipulation of accounts and records etc. Thus, the respondent herein was proceeded against for quite different charges and on different sets of facts before the Court of Chief Judicial Magistrate, on the one hand, and before the Departmental Enquiry on the other.”

D It was, thus, a case where the charges were different.

F 30. In *Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and others* : (2005) 7 SCC 764 this court opined that acquittal of a delinquent by a criminal court would not preclude an employer from taking action by the disciplinary authority, if it is otherwise permissible. Such a departmental proceeding, however, cannot be initiated mala fide. It must be conducted in accordance with law.

G An acquittal of a delinquent ipso facto may not absolve him from undergoing disciplinary inquiry. However, where the charges are absolutely identical, ordinarily the same would not be resorted to.

H

We may notice that in *Ajit Kumar Nag* (supra) the order of dismissal was found to have been legally proved despite the fact that the delinquent was acquitted by the court of law. A

If the Inquiry Officer is biased, no action could have been taken on the basis thereof. It renders the proceeding a nullity. Such an inherent defect in the disciplinary proceeding cannot be cured by an order of the appellate authority. An order which is void cannot be validated by the appellate authority as the materials which were not brought on record could not be taken into consideration by it. B

In *Ajit Kumar Nag* (supra) it was held :- C

“44. We are aware of the normal rule that a person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an unfair trial and a fair appeal. We are also conscious of the general principle that pre-decisional hearing is better and should always be preferred to post- decisional hearing. We are further aware that it has been stated that apart from Laws of Men, Laws of God also observe the rule of *audi alteram partem*. It has been stated that the first hearing in human history was given in the Garden of Eden. God did not pass sentence upon Adam and Eve before giving an opportunity to show cause as to why they had eaten forbidden fruit. [See *R. v. University of Cambridge*]. But we are also aware that principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straight-jacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated ; “To do a great right after all, it is permissible sometimes to do a little wrong”. D E F G

31. Reliance has also been placed on *Commissioner of Police, New Delhi vs. Narender Singh* : (2006) 4 SCC 265 wherein this Court was dealing with a case of a police constable, who was accused of committing theft of arms. He made a confession of his involvement. It was found to be H

A inadmissible in the criminal proceeding. In that factual backdrop this Court held :-

B “12. It is not in dispute that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceeding are distinct and different. Whereas in a criminal case, it is essential to prove a charge beyond all reasonable doubt, in a departmental proceeding preponderance of probability would serve the purpose. [See *Kamaladevi Agarwal v. State of W.B.*].

C 13. It is now well-settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed. “

D 32. It is not a case where a mere benefit of doubt had been given to the respondent in the criminal proceeding. The criminal court has given a positive finding that the prosecution has not been able to prove that the accused had misappropriated the goods. His visit to the border for discharging his duties did not tantamount to misuse of the post or the authority. No evidence has been presented that he did not have the authority to go to the border side on official duties and even the department had not forbidden him from going to that place.

E It was held that as misappropriation of the property has not been proved, the question of any criminal conspiracy did not arise.

F No evidence had been adduced to bring home the charge of criminal conspiracy, which is an independent crime.

G 33. Respondent was found to have been carrying the official revolver for his safety. No evidence was also adduced to establish that when confronted by the police party, he had tried to show or used the same or threatened them with the same

H

or used the official revolver with the intention of doing illegal work. A

That the respondent was allotted a jeep and also allowed to carry with him the official revolver, was accepted by the prosecution side in the criminal case, and thus, he was found not guilty under Section 27 of the Arms Act. B

34. In *Sawai Singh vs. State of Rajasthan* : (1986) 3 SCC 454 this Court opined :-

“16 But in a departmental enquiry entailing consequences like loss of job which now-a-days means loss of livelihood, there must be fair play in action, in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural justice in so far as these are applicable in a particular situation. C
D

17. The application of those principles of natural justice must always be in conformity with the scheme of the Act and the subject matter of the case. It is not possible to lay down any rigid rules as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject matter to be dealt with and so on. Concept of fair play in action which is the basis of natural justice must depend upon the particular lis between the parties.” E
F

35. In *Jasbir Singh vs. Punjab & Sind Bank and others* : 2006 (11) SCALE 204 it was held :- G

“7 The learned counsel for the respondent contended that the decision of this Court has no application. He may be right. But, it is not necessary for us to delve deep into the matter as we are of the opinion that the judgment in civil H

A matter having attained finality, the same was binding on Respondent-Bank.”

36. In *M.V. Bijlani vs. Union of India and others* : (2006) 8 SCC 8 this Court stated the law in the following terms :-

B “25.Although the charges in a departmental
C proceedings are not required to be proved like a criminal
D trial, i.e., beyond all reasonable doubts, we cannot lose
sight of the fact that the Enquiry Officer performs a quasi-
judicial function, who upon analysing the documents must
arrive at a conclusion that there had been a preponderance
of probability to prove the charges on the basis of materials
on record. While doing so, he cannot take into
consideration any irrelevant fact. He cannot refuse to
consider the relevant facts. He cannot shift the burden of
proof. He cannot reject the relevant testimony of the
witnesses only on the basis of surmises and conjectures.
He cannot enquire into the allegations with which the
delinquent officer had not been charged with.”

E In this case, evidence of Mool Singh is totally against the
department. He was not cross-examined. It was not held that he
had deposed falsely.

F 37. For the abovesaid reasons, there is no infirmity in the
impugned judgment. The appeal fails and is accordingly
dismissed.

G 38. Before parting, we may, however, notice that the
respondent was reinstated in service. However, after the order
of stay was granted by this Court on 27th March, 2006, his
services had again been terminated. He is, therefore, directed
to be reinstated forthwith with all consequential benefits. The
order of the Tribunal must be complied with in its entirety forthwith.
Respondent is entitled to costs of the appeal which is assessed
at Rupees One Lakh.

H S.K.S.

Appeal dismissed.