Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1778 OF 2018

Babasaheb Rayappa
Waghmare, Age 55 yrs,
Occ. At present Nil, R/o. Astha,
Tal. Walwa, Dist. Sangli. … Petitioner

V/s.

The Chairman,
Mumbai Port Trusts, Mumbai – 38. … Respondent

SHABNOOR AYUB PATHAN
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Mr. S. A. Rajeshirke for the Petitioner.

Mr. Dhruva Gandhi a/w Mr. Dheer Sampat i/b M. V. Kini & Co., for the Respondent (MBPT).

CORAM : AMIT BORKAR, J.

DATED : MARCH 7, 2026

DATED : MARCH 27, 2026

JUDGMENT:

1. The present Petition is instituted under Article 227 of the Constitution of India, whereby the Petitioner seeks to challenge the Judgment and Award (Part I) dated 10 February 2003 and the Judgment and Award (Part II) dated 7 March 2007 delivered by the Central Government Industrial Tribunal No. II at Mumbai in Reference No. CGIT-2/29 of 2001.

2. The facts giving rise to the present Petition may be briefly stated. The Petitioner came to be appointed on 13 July 1979 as a

Shore Worker with Respondent No.1, namely the Mumbai Port Trust. In the course of his employment the Petitioner was classified as an "A" Category Shore Worker. By the year 1994 he was working as Shore Worker I/C No. 2084. It is the case of the Petitioner that his service record until the alleged incident was without blemish and no disciplinary proceedings had ever been initiated against him. At the relevant time the Petitioner was residing with his wife and two school-going children who were dependent upon his income. On 14 February 1994 the Petitioner was assigned duty at the New Sewree Warehouse during the second shift between 4:00 p.m. and 12:00 midnight.

3. According to Respondent No.1, at about 6:30 p.m. Security Guard No.729, Shri Prakash Mahadev Sawant (PW-1), allegedly noticed the Petitioner in an open area near the chowky situated on the western side of the New Sewree Warehouse. It is alleged that the Petitioner was carrying a chocolate coloured leather handbag and was moving in a suspicious manner. Upon enquiry Shri Sawant is stated to have asked the Petitioner to disclose the contents of the bag, which according to the Respondent the Petitioner did not do. Shri Sawant thereafter called another security guard, Shri Balu Gangaram Dedhe, Security Guard No.815. Upon examination of the bag it was allegedly found that four electronic parts were contained therein. Shri Sawant then escorted the Petitioner along with the said articles to the Shed Superintendent, Shri Hotu Basantlal Pahuja, who in turn reported the incident to the Shivdi Police Station. It is further the case of the Respondent that police officials arrived at the shed on the same day and recorded the

statement of Shri Prakash Mahadev Sawant. On the basis of the said statement a First Information Report bearing C.R. No.26 of 1994 was registered at Shivdi Police Station at about 8:45 p.m. on 14 February 1994 for an alleged offence punishable under Section 379 of the Indian Penal Code against the Petitioner. The police authorities thereafter conducted a panchnama in the shed between 8:00 p.m. and 8:30 p.m. in the presence of two panch witnesses, namely Shri Sameer Ramchandra Pradhan and Shri Vijay Laxman Mahatre. According to the said panchnama four electrical parts weighing approximately two kilograms and valued at about Rs.4,000/- were allegedly recovered from the bag found near the Petitioner. Statements of Shri B.G. Dedhe, Security Guard Buckle No.815, and Shri Basantlal Pahuja, Shed Superintendent, Dock Department, Mumbai Port Trust, were also recorded by the police authorities. The Petitioner thereafter came to be arrested and taken into custody. On 15 February 1994 the Petitioner was released on bail. On the following day, namely 16 February 1994, although no formal order of suspension was issued, the Petitioner was not permitted to mark his presence card and was prevented from attending to his duties. After a period of approximately sixty two days the presence card of the Petitioner was restored and he was allowed to resume his work as a Shore Worker.

4. In consequence of the said First Information Report, Criminal Case No.218 of 1994 came to be instituted before the Court of the Metropolitan Magistrate at Dadar, Mumbai. On 8 November 1994 a charge was framed against the Petitioner in the said criminal proceedings. Between the years 1994 and 1998 no departmental

action was initiated against the Petitioner, it being considered that the allegations in the criminal prosecution and the contemplated disciplinary action arose from the same factual background. During this period the Petitioner continued to perform his duties. However, on 10 February 1998, when the criminal trial had reached an advanced stage, Respondent No.1 initiated departmental proceedings by issuing a Charge Memo accompanied by a Statement of Imputations, Articles of Charge, a list of seven witnesses and a list of five documents. The documents included statements of three witnesses, the First Information Report and the panchnama. The Petitioner was called upon to submit his explanation. On 16 February 1998 the Petitioner submitted his written explanation denying the allegations. Thereafter, on 9 April 1998, Shri D.N. Daithankar was appointed as the Enquiry Officer to conduct the departmental enquiry. At the first sitting of the enquiry held on 8 May 1998 the Enquiry Officer placed on record various documents including the Charge Memo, the Petitioner's reply dated 16 February 1998 and the documents referred to in the charge sheet. The enquiry proceedings thereafter continued between 6 June 1998 and 14 July 1998. The Respondent relied substantially upon the same material which had formed the basis of the criminal prosecution, namely the police statements of Shri Sawant, Shri Dedhe and Shri Pahuja recorded on 14 February 1994. During the course of cross-examination, Shri Basantlal Pahuja produced an additional document described as a report dated 14 February 1998. The said document had not been included in the charge memo and was stated to be inconsistent

with his earlier statement as well as the evidence of other witnesses. He also produced Time Rate Labour Form No.0112/65 dated 14 February 1994. The Petitioner raised objections regarding the admissibility of these documents on the ground that they were not part of the original charge sheet. The Enquiry Officer nevertheless permitted the documents to be taken on record while reserving the question of admissibility for consideration at a later stage. Evidence was also led during the enquiry by the Investigating Officer Shri P.B. Yadav, Constable Uttam Kharat and the panch witness Shri Vijay Mahatre.

5. In the meantime, on 22 July 1998, the learned Metropolitan Magistrate, 13th Court, Dadar, Mumbai, acquitted the Petitioner in Criminal Case No.218 of 1994. The learned trial court recorded that there were serious material contradictions in the testimony of the witnesses examined by the prosecution. It was further observed that the ownership and source of the alleged goods had not been established and that all the witnesses examined were employees of the Mumbai Port Trust. The learned Magistrate also recorded that the possibility of false implication could not be ruled out and consequently held that the prosecution had failed to prove the guilt of the Petitioner beyond reasonable doubt. Thereafter, on 24 July 1998, the Petitioner entered the witness box in the departmental enquiry and led evidence in support of his defence. The Petitioner also relied upon the Judgment and Order dated 22 July 1998 passed by the learned Trial Court acquitting him on the same set of evidence. However, on 15 September 1998 the Enquiry Officer submitted his report holding that the charges levelled

against the Petitioner stood proved. The Enquiry Officer further observed that the acquittal in the criminal case would not operate as a bar to the continuation of the disciplinary proceedings. Subsequently, on 12 November 1998, the Deputy Manager (Hamallage Dock Department), Mumbai Port Trust issued a show cause notice proposing the penalty of dismissal and calling upon the Petitioner to submit his representation. On 27 November 1998 the Petitioner submitted a detailed representation opposing the proposed penalty. In the said representation the Petitioner contended that the findings recorded by the Enquiry Officer were perverse and contrary to the conclusions recorded by the criminal court on the same set of evidence. The Petitioner further pointed out that the prosecution had failed to identify the owner of the alleged materials and that no evidence had been produced to establish that the alleged articles formed part of any goods belonging to the establishment. Notwithstanding these contentions, by an order dated 18 December 1998 the Deputy Manager (Hamallage), in exercise of powers under Regulation 10 of the Mumbai Port Trust Employees' (Classification, Control and Appeal) Regulations, 1976, imposed the penalty of dismissal from service with immediate effect.

6. Being aggrieved by the said order, the Petitioner preferred a departmental appeal which came to be rejected on 13 April 1999 by the Traffic Manager acting as the Appellate Authority under Regulations 21 and 22 of the said Regulations. The Appellate Authority held that the acquittal recorded by the criminal court was on the ground of benefit of doubt and further observed that

the departmental witnesses had stated that the alleged stolen articles were found in the bag of the Petitioner. Thereafter the Petitioner preferred a Review Application which came to be rejected on 4 August 1999 by the Chairman of the Mumbai Port Trust under Regulation 28 of the said Regulations. Subsequently, on 4 April 2001, at the instance of the Petitioner, the Transport and Dock Workers Union raised an industrial dispute concerning the legality of the dismissal. The conciliation proceedings before the Assistant Labour Commissioner, Mumbai, failed and a Failure Report was submitted. The Ministry of Labour, Government of India thereafter referred the dispute for adjudication to the Central Government Industrial Tribunal No. II at Mumbai, where it came to be registered as Reference No. CGIT-2/29 of 2001.

7. By Judgment and Award (Part I) dated 10 February 2003 the learned Tribunal held that the domestic enquiry had been conducted in accordance with the principles of natural justice and that the findings recorded by the Enquiry Officer could not be said to be perverse. The Tribunal further held that no prejudice had been caused to the Petitioner by the production of documents during cross-examination as the Petitioner had been afforded an opportunity to cross-examine the witnesses. The Tribunal also observed that the delay in initiating the departmental proceedings was attributable to investigation regarding the alleged theft of trust property and the possible involvement of several employees. Thereafter, by Judgment and Award (Part II) dated 7 March 2007, the learned Tribunal rejected the reference and held that the punishment of dismissal imposed upon the Petitioner did not

warrant interference. The Petitioner asserts that the dismissal from service on the allegation of theft caused grave prejudice to his life and reputation. It is stated that the stigma and financial hardship resulting from the dismissal compelled his school-going children, two of whom were studying in the S.S.C. Board, to discontinue their education. The Petitioner's family is stated to have suffered severe emotional distress during this period and his mother passed away. Ultimately the Petitioner was constrained to leave Mumbai and return to his native village. Being aggrieved by the aforesaid Awards, the Petitioner has approached this Court by way of the present Petition.

8. Mr. Rajeshirke learned Advocate appearing for the Petitioner contends that the issuance of the charge sheet and the initiation of departmental proceedings after a delay of nearly four years from the date of the alleged incident is arbitrary, unreasonable and actuated by mala fides. It is submitted that the very allegations which formed the basis of the disciplinary proceedings were also the subject matter of the criminal prosecution and were founded upon the same set of evidence. In the said criminal proceedings, the learned Metropolitan Magistrate acquitted the Petitioner upon recording a finding that the possibility of false implication of the Petitioner could not be ruled out. It is further submitted that when the criminal trial had reached its concluding stage and it became apparent that the prosecution case was unlikely to succeed, the Respondent, in an attempt to overcome the deficiencies in the prosecution case, initiated departmental proceedings after an unexplained and inordinate delay of four years. The Petitioner

further submits that even during the course of the enquiry proceedings, the Respondent sought to rely upon a purported report dated 14 February 1994 allegedly prepared by the Deputy Manager. According to the Petitioner, the said document was never produced either before the Criminal Court during the course of the trial or at the earlier stage of the departmental proceedings, and was introduced only at a belated stage with a view to fill the lacunae in the case of the Respondent. The Petitioner further submits that no fair or reasonable opportunity of hearing was afforded to him in respect of the said document. It is contended that the document was taken on record and relied upon in evidence without granting the Petitioner an effective opportunity to challenge its authenticity, genuineness and evidentiary value, thereby causing serious prejudice to his defence. The Petitioner also submits that several witnesses examined during the enquiry proceedings did not depose as to the source from which the alleged four electronic parts were removed or as to the ownership of the said articles. It is urged that the alleged misconduct forming the foundation of the departmental proceedings was identical to the offence alleged in the criminal prosecution, which had culminated in the acquittal of the Petitioner. According to the Petitioner, the Central Government Industrial Tribunal failed to appreciate that the acquittal recorded by the learned Metropolitan Magistrate was not merely on the basis of benefit of doubt, but was based on a clear observation that there existed a possibility of false implication of the Petitioner. It is therefore submitted that the said finding ought to have been accorded due weight while

considering the legality of the disciplinary action.

9. In support of the aforesaid contentions, the learned Advocate for the Petitioner places reliance upon the judgment of the Supreme Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.*, (1999) 3 SCC 679, as well as the judgment of this Court in *Chandrakant Raoji Gaonkar v. Bombay Port Trust & Ors.*, 1995 SCC OnLine Bom 646. It is submitted that the aforesaid decisions lay down the principle that where the charges in the criminal proceedings and the departmental enquiry arise out of the same transaction and are based on identical evidence, and the employee has been honorably acquitted by the criminal court, the continuation of departmental proceedings or reliance upon the same set of evidence would be unsustainable in law.

10. Per contra, Mr. Gandhi learned Advocate appearing for the Respondent submits that the Management of the Mumbai Port Trust opposed the claim of the workman by filing its Written Statement before the Tribunal. It is contended that under the applicable Service Regulations every employee is under an obligation to perform his duties with diligence, sincerity and honesty. It is submitted that the Petitioner was found in possession of electronic spare parts belonging to the Port Trust valued at approximately Rs.4,000/-, which he had allegedly attempted to remove without authorization. In these circumstances disciplinary proceedings were initiated against him by issuance of a charge sheet. It is further submitted that the Inquiry Officer, upon consideration of the documentary evidence and the oral testimony of the witnesses, and applying the principle of preponderance of

probabilities, arrived at a finding that the workman was guilty of the charges levelled against him. On the basis of the findings recorded in the enquiry report, the disciplinary authority imposed the penalty of dismissal from service. According to the Respondent, the findings recorded by the Inquiry Officer are founded upon the material available on record and cannot be said to be arbitrary or biased. It is further contended that the Petitioner was afforded adequate opportunity to defend himself during the course of the enquiry proceedings and that the enquiry was conducted in a fair and proper manner in consonance with the principles of natural justice. It is therefore submitted that the findings recorded in the enquiry report cannot be characterised as perverse or illegal and that the claim of the workman is devoid of merit. The Respondent further submits that a copy of the judgment delivered in the criminal proceedings was placed on record by the First Party. It is submitted that a perusal of the said judgment shows that the learned Metropolitan Magistrate had considered the evidence of Shri Prakash N. Sawant, the Security Guard who was present at the relevant time. The said witness deposed that the Second Party, namely the workman, was found carrying a chocolate coloured bag and that when he was stopped for enquiry he appeared confused, whereupon the matter was reported to the Superintendent and the police authorities were called. It also came on record before the learned Magistrate that the articles in question were stored in the godown belonging to different owners. The said witness was unable to specify from which particular place the electronic items were allegedly removed by the Second Party, though he stated that

he had seen the said articles in the store house. The other witness, Shri B.G. Dethe, who supported the testimony of Shri Prakash Sawant regarding the possession of the articles by the Second Party, was disbelieved by the learned Magistrate on the ground that he was also an employee of the Mumbai Port Trust. The learned Magistrate discarded the prosecution evidence by observing that there was no proper panchnama and that none of the witnesses had actually seen the accused removing the articles. On the basis of these observations the learned Magistrate held that the prosecution had failed to establish the guilt of the accused beyond reasonable doubt and accordingly recorded an order of acquittal.

11. However, it is submitted on behalf of the Respondent that the standard of proof required in departmental proceedings is that of preponderance of probabilities, which is materially distinct from the strict standard of proof required in criminal trials. It is contended that the Second Party was found in possession of the articles in question and that the charge of misconduct stood duly established in the departmental enquiry. Having regard to the seriousness of the misconduct proved against the workman, it is submitted that the punishment of dismissal cannot be regarded as disproportionate. It is further contended that there exists no legal prohibition against conducting departmental proceedings merely because the criminal court has recorded an acquittal.

12. In support of the aforesaid submissions, the learned Advocate for the Respondent places reliance upon the judgment of the Supreme Court in *Noida Entrepreneurs Association v. Noida &*

Others, (2007) 10 SCC 358, and the judgment of this Court in *A.S. Manjrekar v. Bombay Port Trust & Anr.*, 2010 (5) Mh.L.J. It is submitted that the said decisions recognise the principle that departmental proceedings may proceed independently of criminal proceedings and that the standard of proof applicable in such proceedings is that of preponderance of probabilities.

13. I have considered the rival submissions advanced on behalf of the parties and have carefully examined the material placed on record.

14. I begin by stating two legal positions which guide the entire examination of the dispute. The first principle is that criminal proceedings and departmental proceedings operate on different legal standards. In a criminal prosecution the burden on the State is very strict. The prosecution must establish the guilt of the accused beyond reasonable doubt. Unless that high standard is satisfied the accused cannot be convicted. In contrast, a departmental enquiry is not governed by such a strict standard. The enquiry authority is required only to examine whether the charge appears to be established on the basis of preponderance of probabilities. It means that the authority must see whether the available material makes the allegation more probable than not. The second principle is that an acquittal recorded by a criminal court does not automatically put an end to disciplinary proceedings. There can be situations where the acquittal occurs for reasons such as witnesses turning hostile, absence of technical evidence, or some procedural defects in the prosecution case. In such cases the disciplinary authority may still arrive at its own

conclusion on the basis of the material available in the enquiry. These principles have been explained by the Supreme Court in *State of Rajasthan v. Heem Singh (2021) 12 SCC 569* and also in *State v. S. Samuthiram (2013) 1 SCC 598*. In this context it is also necessary to notice the settled legal position regarding the effect of an acquittal in criminal proceedings upon disciplinary action. The Supreme Court in *Heem Singh* has explained this position in clear terms. The Court observed that when a criminal court records an acquittal, that by itself does not automatically bring the disciplinary proceedings to an end. The two proceedings operate in different fields. Therefore, merely because the employee is acquitted in a criminal case, it does not mean that the departmental enquiry arising from the same incident must also fail. The Supreme Court explained that there may be situations where the prosecution in the criminal case fails because the witnesses turn hostile or because the prosecution is unable to establish the charge beyond reasonable doubt. In such cases the criminal court may grant acquittal. However that acquittal does not necessarily mean that the allegations were completely false. For that reason the disciplinary authority may still examine the conduct of the employee in departmental proceedings. In that context the Supreme Court also referred to its earlier decision in *Southern Railway Officers Association v. Union of India (2009) 9 SCC 24*. The Court clarified that the mere fact that an employee has been acquitted in a criminal trial cannot by itself become a ground to interfere with the punishment imposed in disciplinary proceedings. Even an order of dismissal can legally stand despite

such acquittal.

15. The Supreme Court also discussed what is often described in service law as an "honourable acquittal". In *S. Samuthiram* the Court explained that expressions like "honourable acquittal", "fully exonerated" or "acquitted of blame" are not found in the Code of Criminal Procedure or in the Penal Code. These expressions have developed through judicial decisions. The Court observed that an acquittal can be treated as honourable only in a situation where the criminal court carefully examines the entire evidence and reaches a clear conclusion that the prosecution has failed to prove the charges. In other words, the court finds that the allegations themselves are not established. Even in such a situation reinstatement of the employee does not automatically follow unless the relevant service rules specifically provide for such a consequence. The Supreme Court also reiterated the basic distinction between criminal proceedings and departmental enquiries. In criminal law the burden on the prosecution is very strict. The prosecution must prove the guilt of the accused beyond reasonable doubt. If such strict proof is not available, the accused must be acquitted. Departmental proceedings function on a different footing. In such proceedings the authority is required to see whether the charge appears probable on the basis of the available material. This principle is often described as the test of preponderance of probabilities. Because the standards of proof are different, it is possible that a person may be acquitted in a criminal case due to lack of proof beyond reasonable doubt, yet the employer may still arrive at a conclusion of misconduct on the

basis of the material placed before the enquiry authority. The Supreme Court also pointed out that an acquittal in a criminal trial may occur for various reasons. Sometimes the witnesses do not support the prosecution. In some cases important witnesses are not examined. In other cases there may be technical defects in the prosecution evidence. When an acquittal results from such circumstances it cannot be treated as a complete exoneration of the accused. Therefore, the mere fact that an employee has been acquitted in a criminal case does not automatically invalidate the disciplinary action taken by the employer.

16. I, therefore, turn to the judgment of the criminal court. The learned Metropolitan Magistrate, after conducting the trial, examined the evidence produced by the prosecution and recorded certain important findings. The judgment shows that there were serious contradictions in the testimony of the prosecution witnesses. The court also noticed that the prosecution had failed to establish from where exactly the alleged goods were removed and to whom those goods actually belonged. In other words the prosecution could not demonstrate that the articles were the property of the employer or that they had been removed from any particular location within the premises. The learned Magistrate further observed that there existed a possibility that the petitioner had been falsely implicated in the incident. These observations cannot be brushed aside as minor technical remarks. They go directly to the core of the prosecution story. When a criminal court, after considering the entire evidence, records such conclusions, the acquittal cannot be treated as a mere technical acquittal. It

indicates that the prosecution case itself suffered from weaknesses. The authority must at least carefully examine whether the departmental case is truly independent of the weaknesses pointed out by the criminal court.

17. The case of the employer rests broadly on three connected assertions. The first assertion is that the petitioner was found in possession of certain electronic spare parts. The second assertion is that the departmental enquiry relied upon the same witnesses whose statements had also formed part of the criminal prosecution. The third assertion is that the enquiry officer applied the standard of preponderance of probabilities and concluded that the charge of misconduct stood proved. If a worker is actually found carrying goods belonging to the establishment without authority, such conduct can raise suspicion and may justify disciplinary action. If the ownership of those goods is clearly proved and the circumstances demonstrate unauthorized removal, an inference of misconduct may follow on the civil standard applicable to departmental proceedings. However when the record in the present matter is examined carefully certain important gaps become visible. The witnesses examined before the police and those examined during the enquiry were unable to clearly state from which place the alleged articles were removed. They were also unable to establish who owned those goods. The panchnama prepared during the investigation also appears uncertain and does not connect the articles with any specific property of the establishment. These deficiencies were noticed by the criminal court and formed the basis for acquittal. Despite these defects the

enquiry officer treated the same material as sufficient to establish guilt. This situation therefore raises two concerns which cannot be ignored by this Court.

18. The first concern relates to delay. The alleged incident took place in February 1994. The charge sheet initiating departmental proceedings was issued almost four years later. Such a long delay in initiating disciplinary action requires a explanation. It is true that sometimes delay may occur because the employer is conducting a detailed investigation or waiting for the outcome of criminal proceedings. In such circumstances delay alone may not invalidate the proceedings. However in the present case the record does not disclose any satisfactory explanation for the long period of inaction. Learned counsel for the petitioner argued that this delay suggests that the employer realized the weakness of the criminal case and therefore initiated disciplinary proceedings only at a later stage. This Court does not attribute motives, yet the absence of a explanation cannot be overlooked. When serious charges are framed after many years without any justification, the delay becomes a relevant factor while assessing the fairness of the disciplinary action. In the present case the unexplained delay adds to the doubts already created by the weaknesses in the evidence.

19. The second concern relates to the introduction of certain documents during the enquiry proceedings. During cross examination a document described as a report dated 14 February 1994 and a labour form were suddenly produced. These documents had not been included in the original charge sheet. They had also not been produced before the criminal court during

the trial. They surfaced only at a later stage in the departmental enquiry. The petitioner objected to their introduction. The grievance of the petitioner is that he was not given a opportunity to challenge those documents before they were relied upon by the enquiry officer. The principle of fair hearing requires that every material relied upon against an employee must be disclosed to him. Only then can the employee test its authenticity, question the witness who prepared it, and present his defence. If documents are produced suddenly at a late stage and are treated as evidence without giving opportunity to examine them, the fairness of the enquiry becomes doubtful. This issue becomes even more serious when the documents appear to address gaps which had led to the criminal acquittal.

20. It is correct that departmental proceedings can continue even after a criminal acquittal. The existence of that principle does not mean that the disciplinary authority can ignore the findings of the criminal court altogether. When the criminal court has carefully examined the same evidence and has recorded that the prosecution failed to establish ownership, source and involvement, the disciplinary authority must demonstrate how the same deficiencies are overcome in the departmental enquiry. The record before this Court does not show any fresh evidence that connects the alleged articles with the establishment or proves that the petitioner had removed them from any identifiable place. The departmental findings therefore appear to rest on the same material that had been rejected by the criminal court.

21. The Industrial Tribunal while upholding the enquiry relied on two principal reasons. First, the Tribunal held that the petitioner had the opportunity to cross examine the witnesses and therefore no prejudice was caused by the production of documents during cross examination. Second, the Tribunal accepted the explanation that delay in initiating the enquiry was due to the investigation of theft involving several employees. Upon careful examination these reasons do not appear satisfactory. A mere opportunity to cross examine cannot cure the prejudice caused by late production of documents. If a document is produced suddenly without notice the employee cannot verify its its authenticity.

22. Another aspect which requires consideration is the proportionality of punishment. Dismissal from service is the most severe penalty that can be imposed upon a workman. It not only deprives him of his employment but also carries a stigma that affects his reputation. The petitioner had served the establishment for many years and there is nothing on record to show any prior misconduct. When the evidence supporting the charge itself appears doubtful and when the criminal court has already raised the possibility of false implication, the imposition of the maximum penalty requires convincing material. Such material is not available in the present case.

23. After examining the entire record, the submissions of the parties and the applicable legal principles, the findings recorded by the criminal court are not based on a mere technical benefit of doubt. They indicate weaknesses in the prosecution case. Those weaknesses were not properly explained during the departmental

enquiry. The unexplained delay and the introduction of additional documents at a belated stage further undermined the fairness of the enquiry. These factors together caused prejudice to the petitioner. In these circumstances the conclusion reached in the departmental proceedings cannot be sustained.

24. The Petitioner has stated on oath in the memo of the present Petition that after his dismissal from service he was unable to secure any other employment. According to the Petitioner, the allegation of theft made against him had caused a stigma to his name. Because of this allegation, it became difficult for him to obtain work elsewhere. The Petitioner has further stated that due to these circumstances he was compelled to leave Bombay and return to his village, where he remained without regular employment. This statement has been made on oath before the Court and, therefore, it carries value unless it is rebutted by the employer.

25. The Respondent employer has not produced any material before this Court to demonstrate that the Petitioner was gainfully employed after his dismissal. No evidence have been placed on record to show that the Petitioner had secured any alternative source of income during the intervening period. In these circumstances, this Court finds no reason to disbelieve the statement made by the Petitioner that he remained without employment after his dismissal and that he had to return to his native place due to the stigma attached to the allegation. The failure of the employer to produce any contrary evidence also supports this conclusion. Therefore, it would be appropriate to

proceed on the footing that the Petitioner did not have gainful employment during the intervening period after his dismissal.

26. In view of the discussion recorded hereinabove, and taking into consideration the fact that the Petitioner has attained the age of superannuation during the pendency of the present Petition, the following order is passed:

(i) The Writ Petition is allowed;

(ii) The Judgment and Award (Part I) dated 10 February 2003 and the Judgment and Award (Part II) dated 7 March 2007 passed by the Central Government Industrial Tribunal No. II, Mumbai in Reference No. CGIT-2/29 of 2001 are quashed and set aside;

(iii) The order dated 18 December 1998 passed by the Deputy Manager (Hamallage Dock Department), Mumbai Port Trust, dismissing the Petitioner from service is quashed and set aside;

(iv) In view of the fact that the Petitioner has retired during the pendency of the Petition, reinstatement is not possible. The Petitioner shall be deemed to have continued in service till the date of his superannuation with continuity of service for all purposes;

(v) The Petitioner shall be entitled to full back wages from the date of dismissal till the date of superannuation, along with all consequential benefits, including increments and continuity for the purpose of pensionary and retiral benefits;

(vi) The Respondent shall compute and pay to the Petitioner all retiral dues, including pension, gratuity and other admissible benefits, by treating the Petitioner as having been in continuous service till the date of his retirement. Arrears of back wages and retiral benefits shall be paid within a period of twelve weeks from the date of this judgment;

(vii) In the event, the aforesaid amounts are not paid within the stipulated period, the same shall carry interest at the rate of six percent per annum from the date of this judgment until realization;

27. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(AMIT BORKAR, J.)