

**IN THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**W.A. No.148 of 2022**

**Sri Satya Sarkar**

son of late Manmohan Sarkar, resident  
of village- South Indranagar,  
Chowdhury Tilla, P.O. Indranagar, P.S.  
East Agartala, Sub-Division- Agartala,  
District- West Tripura

..... **Appellant(s)**

**- Versus -**

**1. The Union of India,**

represented by the Commissioner &  
Secretary to the Ministry of Micro Small &  
Medium Enterprise, Government of India,  
having his office at Udyog Bhawan, Rafi  
Marg, Connaught Lane, Barakhamba, New  
Delhi- 110001

**2. The Commissioner & Secretary,**

to the Ministry of Micro Small & Medium  
Enterprise, Government of India, having  
his office at Udyog Bhawan, Rafi Marg,  
Connaught Lane, Barakhamba, New Delhi-  
110001

**3. The Director,**

Ministry of Micro Small & Medium  
Enterprise, Micro Small & Medium  
Enterprise Development Institute,  
Government of India, Indranagar,  
Kunjaban, P.S. NCC, District- West Tripura

..... **Respondent(s)**

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For the Appellant (s)	:	Mr. Somik Deb, Sr. Adv. Mr. P. Chakraborty, Adv.				
For the Respondent (s)	:	Mr. B. Majumder, Dy. SGI				
Date of hearing	:	03.10.2024				
Date of delivery of Judgment & order	:	<b>07.02.2025</b>				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td>√</td><td></td></tr></table>	YES	NO	√	
YES	NO					
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**HON'BLE MR. JUSTICE ARINDAM LODH  
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

**JUDGMENT & ORDER**

*[S. Datta Purkayastha, J]*

The judgment and order dated 02.01.2020 passed by the learned writ court in W.P.(C) No.1445 of 2019 is under challenge in this appeal, whereby the learned Single Judge dismissed the writ petition of the petitioner-appellant.

**[2]** The appellant was appointed as Peon on 01.08.1984 in the office of the Director, Ministry of Micro Small & Medium Enterprise Development Institute, Government of India, Agartala. On 01.08.2000, he was arrested in connection with an FIR lodged against him and another, namely Sri Sushanta Majumder, Cashier of the Small Industries Service Institute, [the SISI in short] by one Mr. K.R. Sharma, the Deputy Director-in-Charge, SISI, Agartala. The allegation was that said Sushanta Majumder illegally withdrew an amount of Rs.6,87,072/- from the account of the SISI from SBI, Agartala Branch by forging the signature of Mr. Sharma. The police investigated the case and ultimately submitted the charge-sheet under Sections 468/471/420/409/34 of the Indian Penal Code against both of them and the same was tried by the learned Judicial Magistrate, First Class, Court No.7, Agartala, West Tripura in connected case No.G.R 610 of 2000 and by the judgment dated 20.12.2018, the appellant was acquitted.

**[3]** Prior to that, pursuant to his arrest on 01.08.2000, the appellant was placed under suspension vide order dated 09.08.2000 and a departmental proceeding was initiated against him and on completion of inquiry, the Director, Ministry of Micro Small & Medium Enterprise Development Institute framed the following charges in the departmental proceeding implicating him with said Sushanta Majumder for embezzlement of Rs.6,87,072/-:

**ARTICLE I**

**That the said Shri Satya Sarkar, while functioning as Peon in the O/o the Dy. Director in-charge, S.I.S.I., Agartala, during the period on July, 2000 was involved in the criminal offence towards embezzlement of Govt. money of Rs.6,87,072/- (Rupees Six Lacs eighty seven thousand and seventy two only) most illegally and unauthorisely, out of office bank account vide cheque No.B/4 370833 dt. 20.07.2020 drawn on State Bank of India, H.G.Basak Road Branch, Agartala.**

**ARTICLE II**

**That during the aforesaid period & while functioning as Peon in the aforesaid office, the said Shri Satya Sarkar was arrested by the Police Authority on 01.08.2000 against a written statement dt. 30.07.2000 of Shri Sushanta Majumder, L.D.C., S.I.S.I., Agartala. During investigation by the Police Authority, West P.S., Agartala, an amount of Rs.5,00,000/- (Rupees Five Lacs only) and a Cheque Book bearing No.003709 were recovered from his custody. As per the letter of S.I.(I.O.), West P.S., Agartala the said Shri Sarkar was kept under jail custody. The said Shri Sarkar was suspended with effect from 01.08.2000 by the said office vide order No.4(16)/SISI/AGT/2000/837(1) dt.09.08.2000.**

**ARTICLE III**

**That during the aforesaid period and while functioning as Peon in the aforesaid office, the said Shri Sarkar was involved in the criminal offence towards embezzlement of Govt. money and kept it in his custody. The police authority, West P.S., Agartala, during their investigation recovered a sum of Rs.5,00,000/- (Rupees Five lacs only) and a Cheque Book bearing No.003709 from the custody of the said Shri Sarkar and submitted a seizure list. The West P.S. Agartala, subsequently framed a case No.144/2000 u/s 468/471/420/409 IPC against the said Shri Sarkar under his confession in the matter.**

[4] The Enquiry Officer concluded the inquiry with the following observations:

**ARTICLE – I**

He confirmed the encashment of self cheque bearing no.B/4 370833 dated 20.07.2000 for Rs.6,87,072/- in absence of Dy. Director-in-Charge, SISI, Agartala on 20.07.2000 stated ` .....is fact.'

So it may be stated that his involvement in the criminal offence towards embezzlement of Govt. money is not beyond doubt.

**ARTICLE – II**

As per the letter of S.I.(I.O.), West P.S., Agartala said Shri Satya Sarkar, Peon, SISI, Agartala-Charged Officer was kept under jail custody from 01.08.2000 to 08.08.2000, then to Court jail for further 21 days. He was then released on bail.

The fact was also confirmed by Shri Satya Sarkar, Peon SISI, Agartala during the inquiry proceeding.

**IT IS THEREFORE CONFIRMED THAT SHRI SATYA SARKAR WAS UNDER JAIL CUSTODY FOR MORE THAN 48 HOURS.**

**ARTICLE – III**

The Police Authority, West P.S. Agartala, during their investigation recovered a sum of Rs.5,00,000/- (Rupees five lacs) only and a cheque book bearing no.003709 from the custody of the said Shri Satya Sarkar and prepared the seizure list accordingly.

The Charged Officer, Shri Satya Sarkar, Peon, SISI, Agartala himself authenticated the correctness of the seizure list.

From the above observations made on the basis of analysis of evidences, documents, facts and circumstances, the Inquiry Authority is of the opinion that the involvement in the embezzlement of Govt. money of Shri Satya Sarkar, Peon, SISI, Agartala is not beyond doubt.

**THEREFORE THE CHARGES FRAMED AGAINST HIM ARE PROVED.**

[5] After the Enquiry Officer found him guilty, the Director, Ministry of Micro Small & Medium Enterprise Development Institute, Government of India vide memorandum dated 19.03.2007 forwarded the said inquiry report to the appellant giving him opportunity to

submit his representation. Accordingly, the appellant submitted the representation on 16.04.2007 with a prayer for exonerating him from the liabilities of the departmental proceeding but the departmental authority concurred with the findings of the enquiring authority and penalty of removal from service was imposed on him vide order dated 30.11.2007. Against the said order of penalty, the appellant preferred an appeal which was also dismissed. However, later on he was acquitted from the said criminal case as indicated above.

**[6]** After such acquittal, the appellant approached the Director for releasing his outstanding pay and allowances along with consequential benefits w.e.f. 01.08.2000 i.e. when he was placed under suspension and also prayed for releasing all the pensionary benefits as his date of retirement expired prior to the pronouncement of judgment of the criminal court dated 20.12.2018. Thereafter, getting no redress, he filed the instant writ petition.

**[7]** Learned Single Judge by the impugned judgment dismissed the writ petition mainly on two grounds- firstly, that there was a delay and laches on the part of the appellant in approaching the Court as he was removed from the service in the year 2007/2008 but after his appeal was dismissed, he remain silent and after 11 years later on, he filed the writ petition and secondly, that the acquittal in the criminal case was not a case of no evidence or clean acquittal rather it was only observed by the criminal court that the prosecution failed to prove the charges beyond reasonable doubt.

[8] Before us, Mr. Somik Deb, learned senior counsel appearing for the appellant argues that the acquittal of the appellant in the criminal case was an honourable acquittal as no material against him was found during the trial and moreover, the charges framed in the departmental proceeding as also in the criminal trial were identical and common witnesses were examined in both the departmental proceeding and in the criminal trial and therefore, the penalty imposed upon the appellant in the departmental proceeding is liable to be quashed in view of acquittal of the appellant in the criminal trial honourably. According to learned senior counsel, there was clear cut finding of the learned criminal court that there was no evidence against the appellant. Mr. Deb, learned senior counsel also argues that just because the criminal court in a paragraph incidentally observed that the prosecution could not prove beyond reasonable doubt against him, it cannot be interpreted that he was not honourably acquitted. According Mr. Deb, learned senior counsel, the judgment of the criminal court is required to be considered in its entirety without going by consideration of only a stray sentence used in the judgment. Learned senior counsel relies on a decision of the Apex Court in **S. Bhaskar Reddy and another vs. Superintendent of Police and another**, reported in **(2015) 2 SCC 365**, wherein at Para-22 the meaning of expression of "honourable acquittal" was discussed in the following terms:

**22. The meaning of the expression "honourable acquittal" was discussed by this Court in detail in *Inspector General of Police v. S. Samuthiram : (2013) 1 SCC 598*, the relevant paragraph from the said case reads as under : [SCC P.609, Para-24]**

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in *RBI v. Bhopal Singh Panchal : (1994) 1 SCC 5r41*. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceeding. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. *When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.*"

[9] Mr. Deb, learned senior counsel also relies on another decision of the Apex Court rendered in **Ram Lal vs. State of Rajasthan and others**, reported in **(2024) 1 SCC 175**, wherein in Para-28 it was observed that the expressions like "benefit of doubt" and "honourable acquitted", used in judgments are not to be understood as magic incantations and a court of law would not be carried away by mere use of such terminology. In the said case, the allegation against the appellant was of alteration of his date of birth in his 8<sup>th</sup> standard marksheet to project himself as having attained the majority at the time of recruitment. 5[Five] witnesses were examined in the connected departmental proceeding and those witnesses were also examined in the related criminal trial apart from 8[eight] other witnesses who were also examined in the criminal trial. The Enquiry Officer in the departmental proceeding found the charges to be proved and consequently, the appellant was dismissed from the service. The subsequent appeal filed by the appellant in that case against the order of his removal was also dismissed. Simultaneously, in the criminal

trial, the trial court convicted the appellant under Section 420 and sentenced him to undergo imprisonment for 3[three] years with fine but the Addl. District and Sessions Judge acquitted the appellant. Thereafter, the appellant submitted the representation to his department for his reinstatement and then on refusal, the writ petition was filed in August, 2008 for quashing the dismissal order dated 31.03.2004. The said writ petition was dismissed and subsequently the writ appeal was also ended with similar result. Finally, the Apex Court at Para-12 held as under:

**However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the Court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceeding to stand will be unjust, unfair and oppressive. Each a its own facts. [See G.M. Tank vs. State of Gujarat : (2006) 5 SCC 446, State Bank of Hyderabad vs. P. Kata Rao : (2008) 15 SCC 657 and State of T.N. vs. S. Samuthiram : (2013) 1 SCC 598]**

**[10]** Mr. B. Majumder, learned Dy. SGI appearing for the respondents, places the record of departmental proceeding before us and argues that the witnesses in both the departmental proceeding and the criminal proceeding were not exactly same and moreover, the acquittal of the present appellant was also on benefit of doubt. Mr. Majumder, learned Dy. SGI further contends that Rs.5,00,000/- along with one cheque book were recovered by the police from the house of the appellant and the same were also properly proved in the departmental proceeding and moreso, the charges framed in the

criminal case and in the departmental proceeding were also not the same. Therefore, according to Mr. Majumder, learned Dy. SGI, the punishment imposed upon the appellant in the departmental proceeding was proper.

**[11]** We have given our anxious consideration upon the contentions raised by the learned counsel appearing for the parties and also meticulously perused the records. In the connected departmental proceeding, the presenting officer examined total 6[six] witnesses, namely Mr. K. R. Sharma, Mr. B. Bhattacharya, Mr. P.K. Deb, Mr. S. Biswas, Mr. N.C. Poddar and Mr. S. Debbarma and from the side of the appellant, 2[two] witnesses namely, Mr. Subal Haldar and Mr. Phani Ranjan Sarkar were also examined. But in the connected criminal case, the prosecution examined atleast 8[eight] witnesses including Mr. K. R. Sharma, Mr. N.C. Poddar, Sri B. Bhattacharya, Mr. S. Debbarma and Mr. Phani Ranjan Sarkar who were the common witnesses examined in both the departmental proceeding and in the criminal case. The 2[two] witnesses of the departmental proceeding who were not examined in the criminal case were Mr. P.K. Deb and Mr. S. Biswas. Said P.K. Deb stated in the departmental proceeding that on 30.07.2000 Sri K.R. Sharma with the co-delinquent, Mr. Sushanta Majumder and one Mr. Shyamal Biswas came to his house and there co-delinquent, Mr. Sushanta Majumder told that he had withdrawn the said sum of Rs.6,87,072/- from the bank and further stated that out of fear of life, he did so and the appellant was behind his fear. He also stated that on 1<sup>st</sup> August, 2000

again he went to the house of the present appellant with Sri B. Bhattacharya and others and found police there and there the appellant from his almirah brought out one yellow packet containing 10 bundles of 500/- rupee notes and a cheque book. Thereafter, they returned to the office. The statement of this witness was based mainly on what he had learnt from said co-delinquent, Mr. Sushanta Majumder and regarding production of 10 bundles of 500/- rupee notes by the appellant from his almirah to the police. Witness, Mr. Shyamal Biswas also similarly stated in the said departmental proceeding that in the house of Sri P.K. Deb on 30.07.2000 said Mr. Sushanta Majumder [co-delinquent] wrote a confession letter that he had forged the cheque and withdraw the money and thereafter, Mr. P.K. Deb and Mr. K.R. Sharma went to the house of the appellant. He came to know about the involvement of the appellant only from the confession of Mr. Sushanta Majumder.

**[12]** The defence of the appellant before the enquiring officer was that on 29.07.2000 (Saturday) at about 7/7.30 am the co-delinquent Sushanta Majumder came to his house with a poly bag in his hand and requested him to keep the bag stating that he got something for his [Sushanta Majumder] mother and further stated that he was going to P.K. Deb's house and while returning he would pick the bag up. Thereafter, the appellant kept it in the almirah. Thereafter, on 1<sup>st</sup> August, 2000 the police came to his house with some office personnel and then he disclosed to the police about

handing over of the packet by Sushanta Majumder and also handed over the said packet to the police.

**[13]** From the enquiry report it appears that the enquiry officer mainly relied on the admission of the appellant about the seizure list and its content thereof as mentioned below to hold him guilty, though according to the enquiry officer himself, there were lots of contradictions in the matter of counting of notes and preparation of seizure list in the office, opening of the bag etc. The relevant reply as given by the appellant in said departmental proceeding is quoted hereunder:

**"I.O.> Is the seizure list is true?**

**C.O.> Yes Sir.**

**D.A. Yes Sir, the seizure list is true. It is mentioned there about what things were found in his home.**

**It is seen that C.O. authenticated the correctness of the seizure list.**

**The D.A. also confirmed the authenticity of the seizure list in addition."**

**[14]** However, the enquiry officer did not discuss in his report about the statement of any witness as examined in the said departmental proceeding either as PW or as DW. The enquiring officer also took exception of one comment made by defence assistant as a matter of caution that there was High Court beyond the said enquiring authority. Regarding Article-I, the enquiring officer observed that the involvement of the appellant in the criminal offence towards embezzlement of government money was not beyond doubt and such observation was also only for the reason that said Sushanta Majumder had confessed that he encashed the said amount by a self cheque. Regarding Article-II, the enquiring officer's observation was that the

appellant was in custody for a certain period and therefore, it was proved. Regarding Article-III, the observation was that as the appellant himself admitted the correctness of the seizure list of recovery of Rs.5,00,000/- from his house with one cheque book, therefore, the involvement of the appellant in the embezzlement of government money was not beyond doubt. The ultimate and final conclusion of the enquiring officer himself in respect of Articles-I,II & III of the charges were, therefore, that the involvement of the appellant in such embezzlement was not beyond doubt. There was no such finding of enquiring officer that knowing it to be embezzled money, the appellant kept the said bag in his custody.

[15] In that backdrop, when the criminal court acquitted the appellant from the charges in said criminal proceeding, exhaustively discussed the evidences of the witnesses examined in that case and also observed as follows:

**“It is clearly seen that PW-2, PW-3, PW-4, PW-5, PW-6 and PW-8 all are hearsay witnesses of this case and in the light of above case reference, their evidences cannot be relied on. Moreover, it is apparent from the deposition of PW-1 that he initially lodged this case against accused Sushanta Majumder who was alleged to have forged the cheque but he did not have any allegation against the Peon of their Department Satya Sarkar as neither he was found to have committed any forgery nor he was found to have abetted any act.**

**The Prosecution side also could not produce the I/O of this case to prove the seizure lists and the documents seized by the I/O in this case and hence, from the entire set of Prosecution evidences, I find that none of them had the knowledge of forgery prior to the Complainant of this case and I find no specific evidence to book the accused Satya Sarkar in this case and to convict the accused Satya Sarkar U/S 409/420/468/471/34 of the Indian penal Code, 1860.**

**As pointed out by Ld. Defence Counsel, it is seen from the evidence of the Prosecution witnesses that allegation of forgery is against accused Sushanta Majumder only and not against accused Satya Sarkar as the later did not have**

any power or authorisation to en-cash any cheque from the SBI bank in the name of the Office of SISI but it was endorsed with the cashier only and also the accused Satya Sarkar was never entrusted with any money in that Office as he was a Group-D employee (Peon).

Now, If we sum up the depositions of all the prosecution witnesses, it is seen that the Prosecution could not prove beyond reasonable doubt that on 20.07.2000, the accused Satya Sarkar, in furtherance of his common intention with another accused Sushanta Manjumder, committed forgery of one cheque by forging the signature of the Complainat Sri K. R. Sharma and withdrew an amount of Rs. 6,87,072 (Rupees Six lakh eighty-seven thousand seventy-two only) from the SBI, Agartala Branch and thereby committed fraud and by embezzlement of that money committed breach of trust so as to convict him U/S 409/420/468/471/34 of the Indian penal Code, 1860 and so, the accused Satya Sarkar is entitled to get the benefit of doubt.

[16] If the judgment of the criminal court is read in its entirety, we have no doubt in our mind that there was no incriminating materials, significant in nature, against the present appellant in the criminal case and therefore, he was acquitted for want of any satisfactory evidence against him. Though the learned magistrate in a general parlance in one place wrote that Satya Sarkar was entitled to get the benefit of doubt but practically such acquittal cannot be termed as an acquittal on benefit of doubt rather it was a clear case of honourable acquittal for want of any satisfactory materials.

[17] We are not oblivious of the fact that the power of judicial review in the matter of disciplinary proceeding is very limited and the court should not make any venture to reappraise the evidence as led in the departmental proceeding sitting as an appellate authority of said departmental authority. However, for certain purposeful references, we have indicated in brief about the statements of two witnesses in the departmental proceeding who were not examined in the criminal case to indicate that even if said two witnesses would be

examined in the criminal case, the situation would not be changed. Under such circumstances, certain major lacunae in the enquiry report are also taken note of as indicated above.

**[18]** Based on the discussions made hereinabove, it is evident that the principal witnesses both in the departmental proceeding and in the criminal trial were same and the charges in both the proceedings were identical and ultimately in the criminal trial, the appellant has been acquitted on full consideration of the prosecution evidences by the criminal court awarding acquittal in favour of him as the prosecution miserably failed to prove the charge against him. We are therefore of the view that the appellant is entitled to get the benefit of such acquittal.

**[19]** We are not oblivious of the principle that acquittal of the appellant by a criminal Court does not *ipso facto* absolve him from the liability under disciplinary jurisdiction of the department concerned. In departmental enquiry, penalty can be imposed on the delinquent-officer on a finding recorded on the basis of "preponderance of probability". On meticulous scrutiny of the evidence recorded during departmental proceeding, which are discussed in detail in the preceding paragraphs, prompted us to come to a clear finding that the evidences let in on behalf of the department-respondents are found to be deficient to prove the case on the basis of "preponderance of probabilities."

**[20]** Considering the involved facts and circumstances of the case and acquittal of the appellant in the criminal trial only on 20.12.2018, the delay in approaching the court does not seem to us to be an infeasible barrier to grant the appellant of such equitable relief.

**[21]** As a result, the impugned judgment and order dated 02.01.2020 passed by the learned Single Judge in W.P.(C) No.1445 of 2019 is set aside. Consequently, the impugned punishment order dated 30.11.2007 imposing penalty of removal from the service upon the appellant is quashed. The respondents are directed to release all the outstanding pay and allowances along with other consequential benefits w.e.f. 01.08.2000 when he was placed under suspension till up to the scheduled date of his retirement as arrear along with all pensionary benefits within 3[three] months from today.

**[22]** With such observation and directions, the writ appeal is allowed and accordingly, disposed of.

Pending application(s), if any, also stands disposed of.

**JUDGE**

**JUDGE**

**SUJAY GHOSH** Digitally signed by SUJAY GHOSH  
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*Sujay*