

The instant list presents two questions for consideration by this Court. They are does Clause 4 of the Memorandum of Settlement dated 10th April 2002 create a bar on departmental proceedings continuing when the person subjected thereto is being tried before a criminal court for offences of the same origin does acquittal in some of the connected proceedings entail a benefit in the surviving proceedings further inuring a right upon the delinquent employee of automatic discharge in disciplinary proceedings.

This appeal, by way of special leave, is directed against the final judgment and order dated 7th January, 2009 passed in Writ Appeal No.03/2006 by which the order passed in Writ Petition Civil No.12 of 2005 dated 25th July, 2005 allowing the appeal of the Respondent herein against the order of dismissal from bank services dated 28th March, 2003 and the rejection of the departmental appeal vide order 16th August 2004, was allowed and the order of the Learned Single Judge confirmed.

Three different F.I.Rs stood registered against him, under which he was arrested but later released on bail. In his written show cause to this Memorandum, the Delinquent Employee contended that the disciplinary proceedings should be either dropped or closed since criminal cases were pending him, arising from the same set of transactions the appellant-bank proceeded to appoint an inquiry officer who, in his report, submitted that three out of four charges stood established.

The Delinquent Employee, again denying the charges filed a response to that but was eventually dismissed from the services at the bank, vide the order of dismissal dated 28<sup>th</sup> March 2003. The departmental appeal filed by him, after due opportunity of hearing, was dismissed on 16th August 2004.

Aggrieved by the dismissal of the departmental appeal, the delinquent employee filed Writ Petition Civil No.12 of 2005 before the Gauhati High Court the question before the said Court was whether in view of the Memorandum of Settlement dated 10th April 2002, the disciplinary proceedings against the delinquent employee herein ought to have been stayed or not.

Dissatisfied by the order of the Learned Single Judge, a Writ Appeal was filed bearing No.03 of 2006 having discussed the background of the case, the Division Bench discussed the contention on behalf of the bank regarding the applicability of the Shastri Award and observed that the continuation of the disciplinary proceedings during the pendency of criminal cases would be an infraction.

In conclusion, the Division Bench upheld the order of the Learned Single Judge and confirmed the setting aside of the disciplinary proceedings. On the other hand, it is argued on behalf of the delinquent employee that the disciplinary proceedings, the subject matter of the instant list, were in gross violation of the bipartite agreement, which has been held to have the force of law. In any case, Respondent stand acquitted in two out of three criminal trials.