

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.14039 of 2004

ORDER:

This writ petition is filed seeking Writ of Mandamus declaring the impugned proceedings dated 22.01.2004 of the 3rd respondent, confirming the proceedings of the 4th and 5th respondents dated 29.05.2001 and 19.02.2002 as illegal and arbitrary and consequently direct the respondents to reinstate the petitioner into service as Constable.

2. Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

3. The brief facts of the case are as under:

The petitioner was appointed in CISF as Constable on 04.01.1991. He was posted to CISF Unit KoPT Kolkata on 28.01.1999 from CISF Unit, ONGC Nazire on regular transfer. When the petitioner was residing in Quarter No.B-6/2 at Subash Nagar CISF Family Complex, it was alleged that he did not properly maintain his family in congenial atmosphere, due to which, his wife and daughter died with burn injuries on 27.04.2000 and 28.04.2000 respectively. The local police registered a case in Cr.No.59/2000 under sections 498A & 304-B IPC and arrested the petitioner on 10.05.2000. Since the act committed by the petitioner *prima facie* amounts to gross misconduct, he was issued charge memo with the following charge on 14.10.2000.

“That No.912331641 Constable V.V.Ramanaiah of CISF Unit, CPT Calcutta was arrested by the local police on 10.05.2000 for suspected involvement in a criminal case registered against him vide case No.59, dated 08.05.2000 under section 498A and 304B IPC. He was remanded to judicial custody from 10.05.2000 to 19.07.2000. Thus No.912331641 Constable V.V.Ramanaiah demeaned and tarnished the image of the Force, thereby committed misconduct.”

4. The petitioner denied the said charge vide his reply dated 24.11.2000. A departmental enquiry was initiated against the petitioner and the Enquiry Officer held that the charge framed against the petitioner is proved. The petitioner was served with the copy of the enquiry report and he submitted his representation on 17.05.2001 requesting the authorities to stay the departmental enquiry proceedings till finalisation of the criminal case pending against him. However, without considering the request of the petitioner, the disciplinary authority imposed penalty of removal from service with effect from 29.05.2001. Aggrieved by the same, the petitioner filed appeal before the appellate authority and the same was rejected vide proceedings dated 19.02.2002. In the meanwhile, the criminal case pending against the petitioner was dismissed and the petitioner was acquitted of the offences charged. Thereafter, the petitioner preferred revision before the 3rd respondent and the same was also dismissed vide orders dated 22.01.2004. Questioning the said proceedings, the present writ petition is filed contending that the enquiry conducted against the petitioner is an *ex parte* enquiry and the criminal Court found the petitioner not guilty of the charges alleged and therefore, the petitioner is entitled to be reinstated into service.

5. The respondents filed detailed counter admitting the appointment of the petitioner in the respondent organisation. It is stated that while the petitioner was working at KoPT Kolkata it is alleged that due to his ill-treatment, his wife and daughter committed suicide and died due to burnt injuries, thereby, the petitioner damaged the image of the Force, for which a charge memo was issued. Thereafter, departmental enquiry was conducted. The petitioner did not cooperate with the enquiry officer and insist the Enquiry Officer to stall the departmental enquiry until disposal of the criminal case pending against him. The enquiry officer conducted the enquiry as *ex parte* as the petitioner did not cooperate and submitted his report

holding that the charge framed against the petitioner is proved.

6. During course of enquiry, the petitioner filed writ petition vide AST No.803/2001 before the High Court of Calcutta with a request to stay the departmental enquiry proceedings and the same was dismissed by order dated 17.05.2001. Against the said order, the petitioner filed appeal vide MAT No.1587/2001 before the High Court, Calcutta and the same is pending. Basing on the enquiry report, the petitioner was removed from service vide proceedings dated 29.05.2001. Aggrieved by the same the petitioner filed appeal before the appellate authority as well as filed W.P.No.8284(W)/2001 before the High Court, Calcutta. The appellate authority rejected his appeal. WP.No.8284(W)/2001 is pending before the High Court, Calcutta. Since the occurrence of incident, conducting of departmental enquiry, issuing of removal order are all taken place at Kolkota and the writ petitions filed by the petitioner are pending before the High Court, Calcutta, the present writ petition is not maintainable and liable to be dismissed for lack of territorial jurisdiction.

7. The point for consideration is as to whether the writ petition in the present form and forum is maintainable?

8. The substantive objection of the respondent is that the writ petition in this High Court is not maintainable since no cause of action arose within the State.

9. The admitted facts are that the writ petitioner was working as a Constable in Central Industrial Security Force having joined the same on 04-01-1991. He married on 24-03-1994 and had two children. He was staying in the quarters provided to the servicemen. On 27-04-2000 his wife and the daughter died due to burn injuries having sustained the same in his quarters. On the basis of the complaint of the father-in-law of the petitioner, a case in Cr.No.59 of 2000 was registered by the jurisdictional police in Calcutta. The petitioner was arrested on 10-05-2000 and was remanded to judicial custody and he

was in jail from 10-05-2000 to 19-07-2000. In view of the registration and pendency of the criminal case and the remand, the petitioner was suspended from service and a regular departmental enquiry was ordered. Articles of Charges were framed stating that the conduct of the writ petitioner has demeaned and tarnished the image of the Force, which amounts to misconduct. Enquiry Officer was appointed on 02-12-2000 and during the course of enquiry, the writ petitioner appeared before the Enquiry Officer and wanted the departmental enquiry to be postponed till the culmination of the criminal prosecution. That request was rejected. The writ petitioner appeared before the Enquiry Officer on two or three occasions. Even though he was present during the enquiry, he did not cooperate with the Enquiry Officer and also failed to sign at the requisite places. Since the departmental enquiry was not stayed, the writ petitioner filed A.S.T.No.803 of 2001 on the file of the High Court at Calcutta, which was, however, dismissed on 17-05-2001 holding it to be premature and giving liberty to the writ petitioner to approach the disciplinary authority. During the further course of Departmental enquiry, one of the neighbouring residents by name Smt.Panda was examined on 26-03-2001 and she was also cross-examined by the delinquent writ petitioner.

10. While the matter stood thus, the enquiry proceeded *ex parte* and taking into consideration the material that was placed before the Enquiry Officer, a report was submitted finding the delinquent guilty of the charge of misconduct. The writ petitioner did not respond to the show-cause notices and the disciplinary authority has finally passed the orders on 29-05-2001 removing the writ petitioner from the service. The delinquent/writ petitioner is said to have filed W.P.No.8284(w)/2001 at the Calcutta High Court questioning his removal. He is also said to have filed an appeal bearing No.MAT-1587/2001 on the file of the High Court at Calcutta, which is also pending. Pending those proceedings, the writ petitioner preferred appeal before the departmental authorities which was rejected on 19-

02-2002. He also filed a revision petition before the competent authority which was also rejected.

11. It is contended by the respondent that since the writ petitions had been filed by the writ petitioner in the same matter are pending before the High Court at Calcutta, the present writ petition in this High Court is not maintainable.

12. Learned Counsel appearing for the writ petitioner however submits that after removal, since he is staying in Cuddapah, the High Court of Andhra Pradesh at Hyderabad has got jurisdiction to entertain the writ petition. In support of this contention, learned Counsel relied upon a decision of our High Court reported in **UCO BANK,**

BHUBANESHWAR AND ANOTHER v. K.SUGUNA LAKSHMI^[1]. A perusal of the Judgment shows that the same is not applicable to the facts of the present case for the reason that in that case after the employee was dismissed from service, he settled down at Hyderabad and he died and his wife, legal representatives sought for the refund of the P.F. amount to the legal representatives who are staying in Hyderabad. Since the amounts were due to be paid to the legal representatives of the deceased employee at Hyderabad, this High Court held that it had jurisdiction to entertain the writ petition of an employee who has been dismissed from service while he was imposed the punishment while he was working outside the jurisdiction of the High Court of Andhra Pradesh. Similarly, learned Counsel relied upon another decision of our High Court reported in **A.V.VINOD KUMAR v. EXECUTIVE COMMITTEE OF THE CENTRAL**

WAREHOUSING CORPN.^[2]. The facts of the case in that case are also different from the one in hand. In the decision cited, when the employee was working at Lucknow, the disciplinary authority passed an order and subsequently the employee was transferred to Visakhapatnam and the final order of punishment was served and implemented at Visakhapatnam. Therefore, in that case, it was held

that since the order under challenge came into effect at Visakhapatnam, the High Court at Andhra Pradesh had got jurisdiction. In the instant case, the facts are different. The writ petitioner was working at Calcutta, the incident which resulted in initiation of the criminal and departmental enquiry took place at Calcutta, he was suspended at Calcutta, enquiry was ordered at Calcutta, removal order was passed there and it was also served at Calcutta and as a matter of fact, the writ petitioner has challenged the orders on three occasions before the High Court at Calcutta. The writ petition questioning the removal order passed against the writ petitioner is said to be still pending before the High Court at Calcutta. After all that has been done merely because the writ petitioner has shifted himself to Cuddapah and staying there, he cannot heard saying that the High Court of Andhra Pradesh at Hyderabad has also got jurisdiction to entertain a writ petition.

13. In the counter filed by the respondent, specific averments are made which are not denied to the effect that after the dismissal order is passed, the writ petitioner herein has filed W.P.No.8284(w)/2001 before the High Court at Calcutta challenging the penalty of removal from service which is pending. It is also averred in the counter which is not refuted that when his request to stay the departmental enquiry was negatived by the High Court of Calcutta in A.S.T.No.803 of 2001, the writ petitioner herein has filed an appeal before the High Court of Calcutta which is MAT No.1587/2001 and the said appeal is also said to have been pending.

14. In view of the above undisputed fact, the writ petition in the High Court of Andhra Pradesh is not maintainable.

15. Adverting to the merits of the case, what is noticed is that the impugned order removing the writ petitioner from service is passed on satisfactory and reliable evidence placed on record. The main contention of the writ petitioner is that since the criminal Court in the Sessions Trial has acquitted him disbelieving the case of the

prosecution that he is responsible for the unfortunate death of his wife and daughter, the finding of the departmental enquiry cannot be sustained.

16. The legal position on this aspect is well settled. There are catena of authorities of the Supreme Court but suffice it to refer to a recent decision of the Supreme Court reported in **COMMR.OF POLICE**

v. MEHAR SINGH^[3] wherein it is held as under:-

“Although the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by the Supreme Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the Government service. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. The expression “honourable acquittal”, “acquitted of blame” and “fully exonerated” are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression “honourably acquitted”. The Supreme Court has held that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was “honourably acquitted”. Since the purpose of the departmental proceedings is to keep person, who are guilty of grave cases of moral turpitude out of Government service, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e., at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee

would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.”

17. In the instant case, it may be recalled that the criminal prosecution against the writ petitioner was launched on the basis of the complaint of his father-in-law alleging that the writ petitioner has caused the death of his wife and daughter by setting them on fire in the Government quarters while they were living. The case was taken up as S.T.No.2(4) 2001 on the file of the Additional Sessions Judge At Allore District, 24-Paraganas (S). An extract of the said Judgment is filed. A perusal thereof shows that in a case of this grave nature, only three witnesses were examined namely PW.1-a neighbouring resident of the quarters, PW.2 who conducted the inquest over the dead body and the Investigating Officer (PW.3). Even the complainant/father-in-law of the writ petitioner herein was not examined and considering the evidence of those three witnesses, two of whom were officials namely the Magistrate who conduct the inquest and the Investigating Officer, the Sessions Judge held that the charge against the writ petitioner is not proved.

18. Insofar as the departmental enquiry was concerned, the Enquiry Officer has examined four witnesses. Out of them, Smt.S.Panda (PW.4) was the relevant witness. It was in her evidence that on 27-04-2000 while she was going to drop her daughter, she heard some crying sound of a child from the quarter of Constable Ramanaiah (writ petitioner), that she called another resident of the said block, that they came and knocked the doors of the quarter which was not opened, that after some time the Constable – Ramanaiah (writ petitioner) opened the door of his quarter and told that stove was burst, that they have seen the wife and daughter of the writ petitioner burning and that the matter was informed to the higher authorities. On the basis of this evidence and the other material on record, the Enquiry Officer has

found him guilty and consequently, the writ petitioner stood removed from service.

19. In view of the foregoing discussion, the acquittal of the writ petitioner in a criminal trial cannot be said to be a valid ground for exonerating the writ petitioner from departmental action. He was working as a Constable in CISF and the very charge against him was that his involvement in a criminal case, arrest and remand to judicial custody for two months, demeaned and tarnished the image of the Force. Therefore, there is no substance in the submission of the writ petitioner that since he has been acquitted in a criminal case, the *parameters* of which are altogether different from a departmental enquiry, he is entitled to be absolved from the departmental enquiry as well. The cumulative effect of the foregoing discussion is that the writ petition is not maintainable and there are no merits therein and the same is liable to be dismissed.

20. In the result, the writ petition is dismissed without costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.S.K.Jaiswal, J

Date: 15th January, 2016

Dsr/smr

[\[1\]](#) 2013 (6) ALD 375 (DB)

[\[2\]](#) 2007 (5) ALD 445

[\[3\]](#) (2013) 7 SCC 685