

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3521 of 2005**

- Deceased Naresh Sharma Through Legal Representatives -
 - 1.1 - Shivraj Sharma, S/o Naresh Sharma Aged About 25 Years R/o Village And Post Charthar, Tehsil And District Bhind, Madhya Pradesh.
 - 1.2 - Girish Sharma, S/o Naresh Sharma Aged About 27 Years R/o Village And Post Charthar, Tehsil And District Bhind, Madhya Pradesh.
 - 1.3 - Pushpa Devi, Wd/o Naresh Sharma Aged About 52 Years R/o Village And Post Charthar, Tehsil And District Bhind, Madhya Pradesh.

---- Petitioners

Versus

1. State Of M.P. Through The Director General Of Police, Madhya Pradesh, Police Headquarters, Bhopal Madhya Pradesh., Madhya Pradesh
2. The Inspector General Of Police, Telecom, M.P., Police Radio Headquarters, Bhopal Madhya Pradesh, District : Bhopal, Madhya Pradesh
3. The Deputy Inspector General Of Police, Telecom, M.P., Police Radio Headquarters, Bhopal Madhya Pradesh, District : Bhopal, Madhya Pradesh
4. The Senior Supdt. Of Police Radio, Police Radio Headquarters, Bhopal Madhya Pradesh, District : Bhopal, Madhya Pradesh
5. The Supdt. Of Police Radio, Bhilai Zone, Bhilai, District Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Vasant Zokarkar, counsel for the petitioner/s.
For State	:	Shri Satish Gupta, Govt. Advocate for the State.
As Amicus Curiae	:	Dr. N.K. Shukla, Senior Counsel

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****12/03/2018**

Heard.

During the pendency of the petition, the original petitioner died and his legal representatives have been allowed by this Court to be substituted in place

of the original petitioner and prosecute the petition.

The petitioner had filed Original Application before the State Administrative Tribunal, Raipur. After abolition of the State Administrative Tribunal, the case was transferred to this Court.

2. By this petition, the petitioner has assailed legality and validity of order dated 03/05/1999 passed by the Senior Superintendent of Police by which major penalty of dismissal from service was imposed on the basis of charges of misconduct in a departmental enquiry.

3. While the petitioner was posted and working as Constable (Radio) at Jagdalpur, a charge sheet was issued to him on 09/06/1998 on certain allegations of misconduct along with list of witnesses and documents. In the charge sheet, five charges were leveled against the petitioner which related to an alleged misconduct of the petitioner entering the house of the colleague employee repeatedly in the night in the absence of the colleague employee Constable and exhibiting indecent behaviour followed by indecent proposals made to the wife of the colleague employee. The petitioner submitted his reply which was not found satisfactory and later on, it led to an enquiry held by an enquiry officer. As no Presenting Officer was appointed, upon receipt of charge sheet and relevant documents from the office of the disciplinary authority, the enquiry officer summoned the witnesses of the prosecution and examined them. All the witnesses (except witness - Ku. Archana Sharma) were allowed to be cross examined. The petitioner led defence evidence. As no Presenting Officer was appointed by the disciplinary authority, witnesses of defence were

not cross examined. After completion of enquiry, enquiry report was submitted by the enquiry officer, by which, five charges were found proved. On the basis of enquiry report, a show cause notice was issued to the petitioner proposing penalty. After receipt of reply, the disciplinary authority, vide impugned order, imposed penalty of dismissal from service. The petitioner preferred an appeal before the appellate authority. A ground was raised that the petitioner was not permitted to cross examine the prosecution witness – Ku. Archana Sharma. Appreciating this ground, the appellate authority directed the enquiry officer to re-examine Ku. Archana Sharma and afford the petitioner an opportunity of hearing to re-examine and submit report. Thereafter, the enquiry officer summoned Ku. Archana Sharma who was re-examined. The petitioner in his cross examination refused to cross examine. Thereafter, a supplementary report was forwarded to the appellate authority. Finally, the appeal of the petitioner was dismissed. A Mercy Appeal was also dismissed which led to filing of this petition.

4. Assailing correctness and validity of imposition of penalty of dismissal from service, learned counsel for the petitioner raises as many as five grounds. The first submission of learned counsel for the petitioner is that as far as charge No.1 is concerned, the same is vague and not specific as to what indecent words were used by the petitioner which could be said to be derogatory to the lady family members of the colleague employee. Learned counsel for the petitioner would submit that neither in the charges nor in the statement of allegations, specific misbehavior or indecent behavior was alleged. Further submission is that there was no specific allegation of any indecent proposal by

the petitioner to the wife of the colleague employee of offering her money. As this particular charge was considered to be little grave in nature leading to penalty, vagueness of charge seriously prejudiced the petitioner in his defence. Next submission is that the preliminary enquiry was conducted by Shri Umashankar Ojha, Inspector (T/C) whereas Shri Ojha is not the competent authority. According to learned counsel for the petitioner, even the preliminary enquiry could be held by an officer not below the rank of Deputy Superintendent of Police. Third submission is that as the petitioner was deprived of cross examination of Ku. Archana Sharma, the enquiry is vitiated. Fourth submission is that there is no direct evidence of independent witness having witnessed the incident of the petitioner forcibly entering the house of the colleague employee, exhibiting indecent behaviour, making indecent proposal and harassing female family members of the colleague employee in the night. The enquiry officer has placed reliance on the oral testimony of the evidence of family members of the colleague employee. Without corroboration of such statement by an outside independent witness, the enquiry officer as well as the disciplinary and appellate authority, ought not to have relied upon those statements to hold the charges proved. Last submission is that as no Presenting Officer was appointed, the enquiry officer assumed the role of the Presenting Officer and thus, he became the Judge and Prosecutor both, thereby vitiating the departmental enquiry. Such an enquiry is quasi judicial. It is submitted that the enquiry officer has to remain impartial, fair and if he loses impartiality and assumes the role of Prosecutor, he disqualifies himself to act as enquiry officer. Therefore, the enquiry is vitiated.

5. State counsel would submit that if five charges are read together, they relate to one single allegation of misconduct committed by the petitioner on the same day by entering repeatedly in the house of his colleague employee in a drunken state, also misbehaving and giving indecent proposal to the wife of the colleague employee. This read together with the statement of allegations makes a clear case against the petitioner. Therefore, on the wholesome reading of the five charges together with the statement of allegations clearly show that the petitioner was fully knowing as to what are the allegations levelled against him which he is required to defend. Further submission is that as far as the preliminary enquiry is concerned, even if it is assumed that it was conducted by an authority of lower rank, that by itself, without anything more, would not vitiate the regular enquiry because the law does not prohibits initiation of regular enquiry without obtaining report in preliminary enquiry. It is submitted that the enquiry report is based on the evidence collected during the regular enquiry. Therefore, it would not have any vitiating effect. In so far as opportunity of cross examination of Ku. Archana Sharma is concerned, learned State counsel emphatically submits that in the first round of enquiry, the petitioner was not allowed to cross examine Ku. Archana Sharma. The appellate authority having appreciated this ground, had directed the enquiry officer to hold further enquiry by examining Ku. Archana Sharma and affording the petitioner an opportunity to cross-examine Ku. Archana Sharma. Thereafter, Ku. Archana Sharma was again called and examined as witness but after her examination, the petitioner refused to cross examine her which shows that the petitioner was never keen to cross examine the said witness and it was only an attempt to somehow challenge the order of penalty. Therefore, after opportunity was afforded to the

petitioner to cross examine Ku. Archana Sharma, such grievance, if any, was fully redressed. It is next submitted that present being a case of departmental enquiry, the standard and degree of proof as required in criminal case is not necessary. The prosecution is required to prove the misconduct by preponderance of probability and not beyond reasonable doubt. The finding of charges are based mainly on the statement of wife of the colleague employee and her mother. He would further submit that the circumstances in which the incident happened, there was no possibility of any other outsider being present in the house of the colleague employee – Mr. Rajkumar Sharma where alleged incident of misbehaviour happened. It is not a case where some incident happened in the public place or road in broad day light and number of persons were present. Once the statement of the wife of the colleague employee and her mother are found sustainable on probability, as a matter of principle, no corroboration is necessary. Lastly, it is submitted that though the Presenting Officer was not appointed, there is nothing on record to show that the enquiry officer assumed the role of Prosecutor. According to him, the departmental enquiry records show that after receipt of relevant records of prosecution, the enquiry officer issued notices to the prosecution witnesses who gave their statements and were also allowed to be cross examined (except Ku. Archana Sharma) and thereafter, the petitioner was allowed to lead his defence witness. It is not a case where enquiry officer cross-examined the defence witnesses. In the absence of there being any overt act done by the enquiry officer to indicate that he was acting in a partisan manner, merely because the Presenting Officer was not appointed, it cannot be said that the enquiry officer assumed the role of Presenting Officer.

6. I have heard learned counsel for the parties and perused the records as also enquiry records produced for perusal by learned State counsel.

7. It appears that while the petitioner was posted as Constable at Jagdalpur Railway Station, his colleague employee – Rajkumar Sharma had proceeded on leave to his home town at Bhind, leaving behind his family consisting of his mother-in-law, wife and daughter in a official residence No.23. A complaint was made against the petitioner by the said Rajkumar Sharma that on 07/03/1998, that when Rajkumar Sharma was not present in the house and only lady members were present, in the night, the petitioner entered the house in intoxicated condition and harassed his family members. It is alleged that he acted indecently. Further allegations are that the petitioner repeated the incident and insisted to open the door in the night which frightened the family members, he was warned to go away otherwise neighbours would be called then only the petitioner went back. It is alleged that the petitioner offered Rs.10/- to the wife of the complainant – Rajkumar Sharma with an offer to give more, if needed. A preliminary enquiry was conducted in which statements were recorded including the statement of the petitioner. As in the preliminary enquiry, a *prima facie* case was made out, regular departmental enquiry was initiated against the petitioner by issuing a charge sheet on 09/06/1998. The petitioner submitted his reply denying all the allegations. As the disciplinary authority was not satisfied with the reply, he appointed an enquiry officer. The enquiry officer, thereafter, issued notices to the witnesses of the prosecution who were examined. Though all the prosecution witnesses were examined and

allowed to be cross examined, one of the prosecution witnesses Ku. Archana Sharma who was also present in the house on the date of alleged incident was not called for cross examination because by that time, she was married and request was made not to call her for cross examination. The petitioner was also permitted to lead defence evidence. Finally, the enquiry officer, after recording evidence of the prosecution witnesses as also taking into consideration the records, prepared enquiry report on 28/01/1999. All the charges were found proved. The petitioner then preferred an appeal and specific ground was taken and he was not allowed to cross examine Ku. Archana Sharma. The appellate authority appreciated the arguments that the enquiry officer did not allow the petitioner to cross examine Ku. Archana Sharma. Therefore, the enquiry officer was directed to hold further enquiry and to allow the petitioner to cross examine Ku. Archana Sharma and then submit supplementary enquiry report. The records show that later on, Ku. Archana Sharma was examined by the enquiry officer again and when the petitioner was afforded opportunity to again cross examine Ku. Archana Sharma, he refused to cross examine her. The appeal was, therefore, dismissed.

8. As far as first ground that charges are vague is concerned, upon wholesome reading of charges five in number along with statement of allegations, it cannot be said that the charges were so vague as to deprive the petitioner opportunity to effectively defend the case. The object and purpose of specific allegations to be contained in the charge sheet is that the delinquent employee knows what exactly are the charges which he is required to defend. If the charge sheet is read as a whole, it appears that charge No.1 and 2 relate

to the incident of petitioner coming to the house of the colleague employee – Rajkumar Sharma in intoxicated condition and acting indecently. The statement of allegations clearly state and allege that the petitioner had come to the house in the night in intoxicated condition more than once. When the door was opened, the petitioner entered the house despite knowing that the colleague employee is not present in the house and despite repeated request, he did not go back and left the place after lot of resistance. It has also been very specifically alleged that at about 12:30 AM in the night, the petitioner again came and rang the call bell insisting lady members to open the door, the family members did not open the door and the family members warned the petitioner to go back otherwise neighbours would be called. It is only after this warning that the petitioner left the house. It has also been alleged that in the first occasion, when the petitioner came to the house, he offered Rs.10/- to the wife of the colleague employee and stated that she may take, if she needs more. In charge no.3 and 4, the petitioner is alleged to have offered Rs.500/- for giving to the lady members of the family of colleague employee. These statements taken together constitute a clear and specific charge against the petitioner. Use of the word “indecent” (अशोभनीय) has to be understood in the context in which it is stated. What is reflected from the charge sheet is that the act of the petitioner in entering the house of the colleague employee in the night, in the presence of lady members only, insisting to continue his presence despite repeated request, remaining in intoxicated condition, repeating the act of again attempting to enter the house and making an indecent proposal of offering money of Rs.10/- and then Rs.500/- to Smt. Meena Sharma, wife of Rajkumar Sharma, constitute indecent behavior and conduct of the petitioner. Therefore, I am unable to

accept that the charges are vague in nature.

9. The other submission of learned counsel for the petitioner that the preliminary enquiry having been conducted by an officer lower in rank than Deputy Superintendent of Police has vitiated enquiry, is not made out. It is not a case where enquiry has been held by an enquiry officer, firstly because the preliminary enquiry was followed by regular departmental enquiry and it is not a case where enquiry officer appointed to hold regular departmental enquiry was statutorily incompetent. The purpose and object of preliminary enquiry is only to find out whether *prima facie* case is made out to hold regular departmental enquiry. The report of preliminary enquiry is not made a basis for imposition of penalty. Moreover, learned counsel for the petitioner fails to demonstrate before the Court that even for the purposes of preliminary enquiry, provisions have been made in statutory rules for holding preliminary enquiry obliging the disciplinary authority to appoint an officer not below the rank of Deputy Superintendent of Police. It is not a case where preliminary enquiry alone was made a basis without any other material to impose penalty. This ground, therefore, also fails.

10. Next submission of learned counsel for the petitioner that the petitioner was not allowed to cross examine Ku. Archana Sharma is factually incorrect and contrary to records of the case. It is clear from the order passed by the appellate authority that on such ground having been taken by the petitioner, further enquiry was held and Ku. Archana Sharma was called and re-examined. The petitioner was also afforded opportunity to cross examine her but the

petitioner refused to cross examine. Therefore, no legitimate grievance in this regard can be raised.

11. Next submission of learned counsel for the petitioner that there is no direct evidence to support the case of the prosecution, therefore, the evidence of the wife and mother-in-law of the colleague employee ought not be relied upon, is liable to be rejected. It is well settled legal position that the standard and degree of proof required for an enquiry is not as high as required in a criminal case. While in a criminal case, the requirement is proof beyond reasonable doubt, in a departmental enquiry, the finding of guilt could be reached on preponderance of probability without insisting upon degree of proof beyond reasonable doubt. A perusal of enquiry report clearly shows that for the purposes of charges proved against the petitioner, the enquiry officer and the disciplinary authority relied upon testimony of Meena Sharma – wife of the delinquent employee as also statement of mother-in-law – Smt. Shashisena and both have supported allegations against the petitioner. Once, therefore, evidence is found to be reliable, there is no requirement of law that their evidence could not be acted upon unless it is corroborated from the testimony of any independent outside witness, particularly in the circumstances of the case where the petitioner was repeatedly coming to the house of the colleague employee Rajkumar Sharma when the incident happened in the night and that too in the house of Rajkumar Sharma. Therefore, it cannot be said that it being an incident of broad day light in public place, absence of corroboration by independent witnesses should render the veracity of the witnesses doubtful. In any case, the degree of proof is only preponderance of probability and not

beyond reasonable doubt. This Court has no reason to disbelieve the statement of Smt. Shashisena and Smt. Meena Sharma. From the records of the departmental enquiry, nothing could be revealed in the cross examination of the witnesses to suggest why they would falsely implicate the petitioner in the alleged incident. They have also stated that the petitioner was in drunken state.

12. A perusal of the entire enquiry report would show that the enquiry officer has relied upon statement of Smt. Shashisena and Smt. Meena Sharma to hold the charges proved against the petitioner. In any case, later on, Ku. Archana Sharma was also examined and allowed to cross examine. Even if the statement of Ku. Archana Sharma is kept aside, there is sufficient oral evidence on record to sustain the finding of guilt. Since there is no specific ground raised that the testimony of Smt. Shashisena and Smt. Meena Sharma did not contain any allegations whatsoever and this Court having gone through their statements, no case for interference is made out. The petition is accordingly dismissed.

**Sd/-
(Manindra Mohan Shrivastava)
Judge**