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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.30180 of 2017
and W.M.P.No.32802 of 2017

(Through Video Conferencing)

Hariram Kumar

.. Petitioner

VS.

- 1.The Superintendent of Police,
Kancheepuram District,
Kancheepuram.
- 2.The Deputy Inspector General of Police,
Kancheepuram Range, Kancheepuram.
- 3.The Director General of Police,
Dr.Radhakrshnan Salai,
Mylapore, Chennai 4.
- 4.The Additional Chief Secretary to Government,
Home (Police II) Department,
Fort St.George, Chennai.

.. Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in connection with the impugned order passed by him in Ref.PR.4/2013 dated 21.8.2014 confirmed by the 2nd respondent in his Na.Ka.No.B4/6528/2014, DO Order No.20/2014 dated 7.10.2014 and confirmed by the 3rd respondent in RC.No.191999/AP.I(2)/2014 dated 11.04.2016 and further confirmed by the 4th respondent in GO (D) No.1283 Home (Police - 5) Department dated 16.10.2017 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.



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For Petitioner : Mr.T.Mohan, SC for
Mr.H.Prosper

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.

O R D E R

The petitioner has challenged the following in this writ petition:-

- i) Order dated 16.10.1997 bearing Reference No.G.O.(D) No.1283 of the 4th respondent;
- ii) Order dated 11.04.2016 and impugned communication bearing Reference Rc.No.191999/AP.I(2)/2014 of the 3rd respondent revisionary authority;
- iii) Order dated 07.10.2014, impugned communication bearing Reference Na.Ka.No.B4/6528/2014 of the 2nd respondent the Appellate Authority; and
- iv) Order dated 21.08.2014 impugned communication bearing reference P.R.No.J1/PR.4/13 of the first respondent the Disciplinary Authority.

2. By the impugned orders, the punishment of dismissal from service awarded by the 1st respondent have been upheld.

3. The learned counsel for the petitioner submits that the first respondent has passed a laconic and a non speaking order by merely reproducing the charges and by observing that he fully agreed with the findings given by the enquiry officer and that the enquiry officer has rightly held the charges against the petitioner were proved.

4. The learned counsel for the petitioner states that in the criminal proceedings the petitioner has been acquitted and therefore in the light of the same, the impugned orders are unsustainable.

5. It is submitted that the 2nd respondent had wrongly dismissed the petitioner from services. It is submitted the appellate authorities have wrongly upheld the order of the disciplinary authority though the order of the disciplinary authority itself was non speaking and merely accepts the



conclusion of the enquiry officer. He submits that the evidence in the criminal proceedings and the department proceedings were one and the same and therefore in the light of the decision of the Hon'ble Supreme Courts, the impugned orders are liable to be set aside:-

- " i) M.Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SC 679
- ii) Secretary to Government of T.N. vs. D.Subramaniyan Rajadevan, (1996) 5 SCC 334
- iii) G.M.Tank vs. State of Gujarat and another, 2006(5) 446".

6. Appearing on behalf of the learned Government Advocate for the respondents submits that the yardstick adopted in the criminal proceedings and in the departmental proceedings are different and therefore the punishment imposed on the petitioner from dismissal of service vide order dated 21.08.2014 by the first respondent and the order of the 2nd respondent vide order dated 07.10.2014 rejecting the appeal of the petitioner cannot be interfered.

7. He further submits that the petitioner was present at the scene of occurrence of the offence which is about 30 k.m. from the place of work. It clearly established the involvement of the petitioner in the alleged misremember and therefore it was unbecoming of a police personnel to be involved in crime after deliberately absenting from work without obtaining leave from the superior.

8. It was incumbent on the part of the petitioner to prove his innocence. He further submits that the order of the third and the fourth respondents dated 11.04.2016 & 25.06.2016 are detailed and have given reasons based on the report of the enquiry officer dated 16.07.2013. He therefore submits that the writ petition is liable to be dismissed. Learned Government Advocate for the respondents further submits that the scope of judicial review under Article 226 of the Constitution of India is limited to the decision making process and not to the decision. He therefore prays for dismissal of the writ petition.



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9. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have also perused the four orders of the respondents which have been impugned in this writ petition and deposition of the witnesses before the Disciplinary authority and the order passed by the Sessions Court on 24.04.2015 in S.C.No.248 of 2013.

10. The petitioner was appointed as a Grade II Police Constable in the recruitment called by the Tamil Nadu Uniformed Services Recruitment Board. After completion of training, the petitioner was posted as a Grade II Police Constable with TSP III Battalion, Veeapuram. Cheenai.

11. There the petitioner was issued with a Charge Memo dated 02.02.2013. The charges against the petitioner was that he was absent without proper authorization on 18.01.2013 between 8.00 p.m. to 8.00 a.m. on 19.01.2013. That the petitioner had merely made relieving a entry in the Sentry Relieving Register and was absent from the guard duty without getting any permission and/or leave from the superior officers.

12. The 2nd charge against the petitioner was that he was found lurking near the house of one Masilamani and had allegedly outraged of modesty of her age about 18 years and was arrested and remanded to judicial custody for a period of 15 days thereby brought disrepute to the Police Service.

13. An FIR was registered against the petitioner on 19.01.2013 in Cr.No.37 of 2013 for the alleged commission offences under Sections 451, 354, 323 and 506(i) of I.P.C. r/w 3(1)(xi) & 3(2) (vii) of Scheduled Caste /Scheduled Tribe (Prevention of Atrocity) Act, 1989.

14. Ultimately, the case was taken on the file of the Sessions Court at Kancheepuram District in S.C.No.248 of 2013. The Principal District and Sessions Judge, Chengalpattu by a Judgment dated 24.04.2015 in S.C.No.248 of 2013 acquitted the petitioner.

15. In the parallel disciplinary proceeding before the disciplinary authority, the petitioner stated that on 18.01.2013 he was suffering from stomach upset and therefore even before reporting to duty at 8.00 p.m., in the afternoon 12.00 p.m. he



had made an entry in the sentry register stating that he was proceeding to hospital for a check up as he was feeling unwell. It was further submitted that as the petitioner was feeling unwell he left to his parents house with a request to Ramakrishnan, III Platoon, Armed Reserve, Kancheepuram District to inform his superior and to continue with the Guard duty in his place and in his absence. After a criminal case was registered against the petitioner in Crime No.37 of 2013 dated 19.01.2013.

16. In the Charge Memo in P.R.No.4 of 2013 dated 2.2.2013, following two charges were framed against the petitioner :

1. While you were serving in District Armed Reserve, Kancheepuram District and entrusted with Guard duty at Sriperumpudur, Pennalur EB office on 18.1.2013 at about 12.00 p.m you made entries in the Record Book that you were suffering from stomach pain and proceeding to hospital and you did not turn up till 8.00 p.m for the guard duty, thereby you have left the place without any permission or leave from the superior officers and committed irreprehensible conduct.

2. On 18.1.2013, at 11.00 p.m. at Thattanmalai Street, Chinnanatham, Kancheepuram District, near your residence you attempted to enter the house of Sumathi, aged 18 with bad intention and fought with the family members and based on the complaint preferred by them, a criminal case was registered against you in Crime No.37/2013 on the file of Chengalpattu Town PS for offences u/s 451,354,323,506 Part - I IPC r/w Section 3(1)(IX) and 3(II) (VII) of SC/ST Prevention of Atrocities Act, 1989, arrested and remanded to judicial custody and thereby committed irreprehensible conduct in the police force and brought ill reputation.

17. In the departmental proceedings, the petitioner had questioned the charges leveled against him stating that he was not involved in the alleged crime.

18. He further submitted that the so-called statements recorded under Section 161 of Cr.P.C cannot be the basis of charges in the charge memo for initiating disciplinary



proceeding. He had requested the department to await for the completion of the Criminal Proceedings.

19. Before the Sessions Court, the prosecution failed to prove the case against the petitioner. The petitioner was acquitted as none of the prosecution witnesses came forward to depose the evidence against the petitioner. Thus, the prosecution failed to establish the case against the petitioner in the criminal proceedings. In the criminal proceedings, acquittal was not merely based on a reasonable doubt but on a total failure on the part of the prosecution to prove the case against the petitioner.

20. In the disciplinary proceedings, same witnesses who had given statement were examined. They were also cross examined. During the cross examination, the alleged victim (defacto Complainant) has deposed as under:-

Evidence	Question	Answer
P.W.1- (the alleged victim)	Did you see me or any body else leave your house	I cannot confirm since it was dark and you were near our house, I said so.

21. Similarly the answer of the mother of the victim question Nos. 1 and 2, which reads as under:-

Evidence	Question	Answer
P.W.3- (Mother of the victim)	1. Is it true, I grabbed your hair and hit you	No you did not hit me. During night you pushed me by keeping your hand on my head.
	2. Is to correct to say that I came to your house in the night on 18.01.2013.	when my husband scolding a person for entering into our house on 18.01.2013 I thought that you must have come into my house when you came from the closet on our home page.

22. The only reason why the petitioner has been found guilty in the disciplinary proceedings as far as the 2nd charge was concerned because he was at the spot of occurrence.



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23. The explanation of the petitioner that he went to attend to his nature's call and when he heard commotion emanating from the victim's house he rushed to the spot of the scene to find out what was happening. Therefore, there is no direct evidence to establish that the petitioner had outraged the modesty of a 18 year old girl.

24. Before the enquiry officer, the petitioner had cross-examined the defacto complainant and her parents. None of them have stated that either the petitioner had outraged modesty of the defacto complainant or that he had pulled her hand.

25. That apart, the order dated 21.08.2014 of the first respondent viz., Superintendent of Police is a non speaking order. There is no discussion in the said order for either accepting or rejecting the explanation given by the petitioner. It simply confirms the report of the Enquiry Officer. The order of the 2nd respondent also merely upholds the same.

26. The other two impugned orders dated 11.04.2016 and 16.10.2017 of the 3rd and 4th respondents merely detail the order passed by the first and 2nd respondents on 21.8.2014 and 07.10.2014. The 4th respondent has come to a conclusion when the defacto complainant's father was shouting, the petitioner would have hidden near the bush for a while out of fear of being identified and might have come out of the bush after some time by casually attending to a call in his cell phone was not convincing.

27. This conclusion of the 4th respondent is clearly based on conjecture and cannot be said to satisfy the test of preponderance of probability. Mere presence of the petitioner was present at the scene of occurrence cannot be the sole basis to conclude that the 2nd charge against the petitioner has been proved particularly in the light of the fact that the witnesses have not made any direct statements against the petitioner during their examination.

28. Distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof are applicable to the instant case.



29. The Hon'ble Supreme Court in M.Paul Anthony vs. Bharat Gold Mines Ltd., (1999) 3 SCC 679, in para Nos.34 & 35 has held as under:

34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

30. The Hon'ble Supreme Court in G.M.Tank vs. State of Gujarat and another, 2006 (5) SCC 446, held as under:-

30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on



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facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency



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of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

31. A similar view was recently taken by the Hon'ble Supreme Court in Civil Appeal No.7130 of 2009 vide its order dated 01.08.2019 in the case of Shashi Bhusan Prasad vs. Inspector General, Central Industrial Security Force & Others. In paragraph Nos.20 & 22:-

" 20. The judgment in M. Paul Anthony case (supra) on which the learned counsel for the appellant has placed reliance was a case where a question arose for consideration as to whether the departmental proceedings and proceedings in a criminal case on the basis of same sets of facts and evidence can be continued simultaneously and this Court answered in para 22 as under: The conclusions which are deducible from various decisions of this Court referred to above are:

a. Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

b. If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

c. Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case

launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

d. The factors mentioned at (ii) and (iii) above cannot



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be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

e. If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

21. It may not be of assistance to the appellant in the instant case for the reason that the charge levelled against the appellant in the criminal case and departmental proceedings of which detailed reference has been made were on different sets of facts and evidence having no nexus/co? relationship. The kind of criminal act/delinquency which he had committed in discharge of his duties in the course of employment. That apart, much before the judgment of the criminal case could be pronounced, the departmental enquiry was concluded and after the Inquiry Officer had held him guilty, he was punished with the penalty of dismissal from service."

32. The ratio of the Court in the above cases squarely apply to the facts of the case. Therefore, the impugned orders are liable to be quashed in the light of the order dated 24.04.2015 in the Criminal proceeding against the petitioner in S.C.No.248 of 2013. Therefore, punishment based on the 2nd charge against the petitioner is wholly unsustainable.

33. Coming to the first charge, there is no dispute that the petitioner was absent from duty on 18.01.2013. The evidence of N.Ramakrishnan makes it very clear that the petitioner had informed him that he was unwell and therefore he was taking leave and had requested latter to continue to remain in guard duty in his absence.

34. The deposition of N.Ramakrishnan also makes it clear that he had attempted to inform the superior about the fact that



2.The Deputy Inspector General of Police,
Kancheepuram Range, Kancheepuram.

3.The Director General of Police,
Dr.Radhakrshnan Salai,
Mylapore, Chennai 4.

4.The Additional Chief Secretary to Government,
Home (Police II) Department,
Fort St.George, Chennai.

+2CCs to Mr.H.Prosper, Advocate, SR.No. 41631
+1CC to The Government Pleader, SR.No. 42039

W.P.No.30180 of 2017

SRA(CO)
B.VC (12/10/2021)