

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9795 OF 2018

Sandeep s/o Ramesh Chavan,
Age; 27 years, Occ. Nil,
R/o; Bendri, Tq. Bhokar,
Dist. Nanded.

...PETITIONER

V E R S U S

1. The State of Maharashtra
Through Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Director General of Police
Maharashtra State, Mumbai,
Shyam Prasad Mukharjee Chowk,
Culaba, Mumbai-32.
3. Special Inspector General of Police,
Nanded, Range Nanded.
4. The Superintendent of Police
Parbhani, Dist. Parbhani.

...RESPONDENTS

.....
Advocate for the petitioner : Mr. Avinash Deshmukh i/by Mr. Prain B.
Rakhunde
AGP for the Respondent Nos. 1 to 4 : Mr. K.N.Lokhande
.....

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED DATE : 22.08.2022
PRONOUNCEMENT DATE : 25.08.2022**

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule.

2. Rule is made returnable forthwith. With consent of the learned advocates for the respective parties, heard finally at the stage of admission.

3. The petitioner is assailing judgment and order dated 20.07.2018 passed by the Maharashtra Administrative Tribunal (for short "the Tribunal") in Original Application No. 169 of 2017. The petitioner had instituted Original Application No.169 of 2017, challenging the order passed by Disciplinary Authority dated 04.03.2016, by which punishment of dismissal from service was imposed on him. He also challenges the orders dated 18.11.2016 and 06.06.2017 passed by the appellate and the revisional authority by which appeal and revision respectively were rejected. By the impugned judgment and order, the Tribunal has dismissed the Original Application.

4. By the order dated 22.08.2016 the petitioner was appointed on the post of police constable on temporary basis. It was one of the conditions of the appointment that if the candidate indulged in any misconduct before confirmation in service, his services would be terminated without conducting any disciplinary proceedings.

5. The petitioner was placed under the suspension by order dated 20.05.2015 on account of registration of F.I.R. against him. Disciplinary proceedings were initiated against him in respect of two charges. In the first charge, it was alleged that he was unauthorisedly absent during 01.11.2014 to 04.11.2014. It was also alleged that he was absent for parade at 6.30 hours on 01.11.2014. In the second charge, it was alleged that he made false promise of marriage to Ku. Nikita Namdeo Jadhav and indulged into sexual relations with her on 02.11.2014. Later on he refused to marry her, on account of which on 05.11.2014 Ku. Nikita consumed poison. It was further alleged that on 08.11.2014, FIR was registered against him. With a view to prevent the loss of job, he entered into compromise with Ku.Nikita and solemnized marriage with her on 06.12.2014. It was further alleged that Ku.Nikita expired on 28.02.2015 owing to consumption of poison. It was alleged that the petitioner failed to give any intimation about her death, and thereby malined the image of police in the eyes of public.

6. Simultaneously the petitioner was also prosecuted in Sessions Case No.01 of 2015 for the offence punishable under Section 376 of the Indian Penal Code. By the judgment and order dated 02.09.2015, he was acquitted.

7. In the disciplinary inquiry, the inquiry officer gave report on 28.09.2015 holding the charge to be partially proved and recommended penalty of stoppage of increments for two years without

cumulative effect. However, disciplinary authority issued show cause notice on 12.01.2016 proposing to impose penalty of removal from service and called for the petitioner's explanation. Thereafter, disciplinary authority imposed penalty of removal from service on him vide order dated 04.03.2016. The period of suspension was treated as suspension. An appeal preferred by him to the appellate authority was rejected vide order dated 18.02.2016. The revision petition was also rejected by order dated 06.06.2017. The petitioner challenged the orders passed by the disciplinary authority, appellate authority and the revisional authority before the Tribunal by filing Original Application No. 169 of 2017. The Tribunal dismissed the same vide judgment and order dated 20.07.2018.

8. Appearing for the petitioner, Mr. Deshmukh, the learned Counsel submitted that the findings recorded by the authorities are perverse and are not supported by any evidence. He submitted that the inquiry officer, though held that the charge No. 2 to be partially proved, it was not specified as to which portion of the charge was found to be proved. He placed reliance on the judgment of the criminal Court to contend that the petitioner was acquitted considering the same evidence in respect of the same incident. He took us through the depositions of witnesses to buttress his contention that there was no evidence on record to hold article of charge - 2 as proved.

9. In support of his contentions Mr. Deshmukh relied upon

following judgments.

1. **Moni Shankar Vs. Union of India and Anr. 2008 (3) SCC 484**
2. **Commissioner of Police, Delhi & Ors. Vs. Jai Bhagwan 2011 6 SCC 376**
3. **The State of Rajasthan and Ors. Vs. Heem Singh 2020 AIR (SC) 5455.**

10. Per contra, Mr. K.N.Lokhande, the learned AGP appearing for respondents supported the order passed by the Tribunal. He invited our attention to Clause-4 of the appointment order dated 22.08.2014, which empowered the appointing authority to terminate the services of the petitioner without holding any inquiry. He submitted that the petitioner had barely worked for few months in the department and indulged in serious misconduct. He further submitted that the petitioner took inconsistent stand to explain his absence. He prayed for dismissal of the petition.

11. It is undisputed that the petitioner was yet to be confirmed in service and under Clause-4 of the appointment order dated 22.08.2014, it was not even necessary to conduct any disciplinary proceedings for termination of his services. However, in the instant case, the detailed disciplinary proceedings have been conducted by giving full opportunity of hearing to him. Mr. Deshmukh has not set up a case of violation of the principles of natural justice and infraction of

provisions of Discipline and Appeal Rules in conduct of the inquiry. Therefore, no infirmity is alleged about the manner in which the disciplinary proceedings was held.

12. Mr. Deshmukh, however, objected to the ultimate conclusion of the guilt that is reached by the authorities on the basis of evidence on record. He submitted that there is complete absence of evidence for holding the charge as proved and that therefore, the findings suffer from vice of perversity. The preposition set up by Mr.Deshmukh needs no reiteration. It is trite that if the Court finds that there is absolutely no evidence in support of the charges or conclusions reached in the proceedings are such that no prudent person could have arrived at such conclusion, this Court would be justified in interfering in such findings.

13. However, on perusal of evidence on record, we find that there is evidence to suggest the petitioner's involvement in the incident. Though, we are not supposed to re-appreciate the evidence, since a case of perversity is set up by Mr.Deshmukh, we would briefly refer to some evidence which demolishes the same. In the inquiry Ku. Nikita's father was examined, who confirmed his pre-recorded statement. Also examined was Ku. Nikita's uncle Mr. Bhagwan M.Jadhav, who also confirmed his pre-recorded statement. In his examination-in-chief he specifically referred to the allegations of the petitioner keeping physical relations with Ku.Nikita against her wish.

Also on record is the FIR and the statement of Ku.Nikita, who is unfortunately no more and therefore could not be examined in the inquiry. Petitioner's conduct of solemnising marriage with Ku. Nikita speaks volumes about his involvement in the incident. After considering this evidence on record, it cannot be said that there is total absence of evidence in support of charge.

14. Faced with this difficulty, Mr. Deshmukh, then made an attempt to impress upon us that we can arrive at a conclusion different than the one recorded by the authorities on the basis of evidence. He relied upon the decision of the Apex Court in **Moni Shankar** (supra), the paragraph Nos. 15 and 16 of which reads thus, :

"15. We have, as noticed hereinbefore, proceeded on the assumption that the said paragraphs being executive instructions do not create any legal right but we intend to emphasise that total violation of the guidelines together with other factors could be taken into consideration for the purpose of arriving at the conclusion as to whether the department has been able to prove the charges against the delinquent official. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom,. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of

burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.

16. We must also place on record that on certain, aspects even judicial review of fact is permissible. ”

15. We fail to understand as to how the decision of **Moni Shankar** (supra) can assist the petitioner. We do not find that any relevant piece of evidence has been ignored by the authorities or that any irrelevant material is taken into consideration while holding the petitioner guilty of misconduct.

16. By relying upon the decision in **Jai Bhagwan** (Supra), Mr. Deshmukh submits that clear and direct evidence is needed for holding the charge as proved in the disciplinary proceedings. The said decision is rendered by the Apex Court in view of the peculiar circumstances where two witnesses did not support the case and several other persons including the police officers present at the incident were not examined for proving the charge of illegal gratification. In that case the charge of illegal gratification was drawn merely on the evidence of returning of Rs. 100/- to the complainant without any specific evidence about the payment of such gratification. In the present case there is direct evidence of the petitioner’s involvement in the incident.

17. Reliance of Mr.Deshmukh on the judgment in the **The State of Rajasthan and Ors. Vs. Heem Singh** (Supra) is completely misplaced, as we find that the said decision actually goes against the petitioner. Mr. Deshmukh has relied upon the paragraph No.33 of the judgment which reads thus :

“ 33 In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are

*disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. **To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain.***

(emphasis supplied)

18. Thus, it is held in **The State of Rajasthan and Ors. Vs. Heem Singh** (supra) that the Court has to satisfy that there is some evidence to support the charge of misconduct and to guard against the perversity. It is further held that same does not allow the Court to re-appreciate evidenciary value in the disciplinary inquiry to substitute the view which appears to the Judge more appropriate.

19. We have already held that there is evidence available on record to prove petitioner's involvement in the incident. We are reminded of the decision of the Apex Court in **Kuldip Singh Vs. Commissioner of Police and Others (1999) 2 SCC 10**, in which it is held that,

"10. A broad distinction has, therefore, to be

*maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. **But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.***

(emphasis supplied)

20. So far as the first charge of unauthorized absence from duty is concerned, the factum of absence is admitted by the petitioner. So far as the pretext put forth by him to justify absence is concerned, the same is self contradictory. He initially gave the pretext of domestic difficulty by his application dated 04.11.2014. Later he contradicted himself by putting forth the pretext of sickness. Ultimately he was found to have been involved in the incident with Ku.Nikita on 02.01.2014.

21. So far as the petitioner's acquittal in the criminal trial is concerned, the law in this regard is well settled. The purpose of criminal prosecution and disciplinary proceeding is entirely different. The standard of proof in two sets of proceedings is also different. The petitioner has been acquitted in the criminal trial, essentially on account of witnesses turning hostile. As against this, there is evidence available on record in the disciplinary proceedings to prove the petitioner's involvement in the incident. Therefore, the findings recorded in the disciplinary proceedings cannot be set at nought on the

basis of petitioner's acquittal in the criminal trial.

22. In the result, we do not find any infirmity or jurisdictional error being committed by the Tribunal while dismissing the petitioner's Original Application. The petition must fail and is dismissed accordingly. No costs.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE