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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.11.2022

PRONOUNCED ON : 10.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.40535 of 2016

K.Kumaresan

... Petitioner

Vs.

1.The Commissioner of Police,
Veppery, Chennai.

2.The Deputy Commissioner of Police,
T.Nagar District,
T.Nagar, Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in connection with the impugned order passed by him in PR.No.08/PRS(1)/2015 u/r 3(b) dated 26.01.2016 and confirmed by the 1st respondent in PR.No.07/PRS(1)/2015, u/r 3(b)Rc.No.89/36113/PR.V(1)/CPO/2016 dated 22.07.2016 and quash the same and further direct the respondents to reinstate the petitioner into service and to grant all consequential service and monetary benefits.



For Petitioner : Mr.K.Venkata Ramani
Senior Counsel
For Mr.S.Sivakumar

For Respondents : Mr.S.Rajesh
Government Advocate

ORDER

The punishment of dismissal from service imposed on the petitioner, which was confirmed by the Appellate Authority are sought to be quashed in the present writ petition.

Facts of the Case:

2. The petitioner was recruited as Grade-II Police Constable on 04.01.2006. He was posted at Special Action Force, Veerapuram, Cehnnai and transferred to Armed Reserve, Chennai City in the year 2009 and further transferred to Law and Order in the year 2011 and worked as constable in the Virugambakkam Police Station. A charge memo was issued to the writ petitioner in proceedings dated 02.02.2015, under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. The charge against the writ petitioner was that on 27.06.2014 at about 1930 hours, the petitioner along with another Head Constable Mr.G.Raja



went to the Women Hostel namely Miracle Home Care situated at No.5, Abirami Nagar, 2nd Street, Virugambakkam, Chennai – 92, and unilaterally conducted an enquiry. Again the petitioner along with the said Head Constable on 28.06.2014 at 04:00 p.m. went to the said Women Hostel in drunken mode and misbehaved with the women, who were staying in the hostel, threatened them and sexually harassed them and behaved in an indecent manner and committed an act of misconduct.

3. The petitioner submitted his explanations, denying the charges. Not satisfied with the written statement of the defence submitted by the petitioner, the Disciplinary Authority appointed an Enquiry Officer, who in turn, conducted an enquiry and after affording an opportunity to the writ petitioner, submitted his enquiry report. Along with the enquiry report, a show cause notice was issued to the writ petitioner on 30.12.2015, asking him to submit further objections on the findings of the Enquiry Officer. The petitioner submitted his further objections on 19.01.2016 and thereafter, the 2nd respondent / Disciplinary Authority passed the impugned order, imposing the punishment of dismissal from service in proceedings dated 26.01.2016. The petitioner preferred an Appeal before the 1st respondent on



20.02.2016 and the said Appeal was also rejected by the 1st respondent in proceedings dated 22.07.2016. Thus, the petitioner is constrained to move the present writ petition.

Arguments on behalf of the Petitioner:

4. The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that the case on hand is a case of 'No Evidence'. Absolutely there is no evidence to establish the charges framed against the writ petitioner. Merely based on presumptions and assumptions, the authorities formed an opinion and imposed the major penalty of dismissal from service. Thus, the punishment is to be set aside on the ground that it is a case of 'No Evidence'.

5. In order to substantiate the ground raised on behalf of the writ petitioner, the learned Senior Counsel for the petitioner drew the attention of this Court with reference to the findings of the Enquiry Officer in his report. The minutes of the Enquiry Officer states that the oral enquiry was conducted against the writ petitioner Mr.K.Kumaresan and against the other co-delinquent Mr.G.Raja and opportunities were afforded to them to defend



their case. However, the learned Senior Counsel for the petitioner pointed out that the complainant Tmt.Asha and her assistant, who was with her Selvi.S.Vijayalakshmi were not even examined by the Enquiry Officer. They did not appear before the Enquiry Officer in spite of the fact that the notices were issued to them on several occasions. The Enquiry Officer found that the said complainant and her assistant were not residing in the address given in their complaint and therefore, the Department was unable to serve notice to the complainant and her assistant.

6. The learned Senior Counsel appearing on behalf of the petitioner raised a doubt that in the absence of examining the complainant and her assistant, how could the Enquiry Officer arrived a conclusion that the charges against the writ petitioner are held proved. It is highly improbable to form such an opinion, since there is no direct evidence to establish the charges against the writ petitioner and more so, the allegations in the charge memo are serious in nature and in the absence of any evidence, the authorities competent ought not to have imposed the major penalty of dismissal from service.



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7. The learned Senior Counsel appearing on behalf of the petitioner reiterated that merely based on the complaint without examining the complainant and in the absence of any documents and evidences, the Enquiry Officer arrived a conclusion that the charges against the writ petitioner are held proved. Thus, it is a case of 'No Evidence' and therefore, the punishment is liable to be set aside.

8. The learned Senior Counsel appearing on behalf of the petitioner contended that the petitioner has submitted his further objections, categorically pointing out the lapses in the findings and the erroneous opinion formed by the Enquiry Officer. In his written statement of defence, the petitioner has stated that the complainant was not examined and therefore, the petitioner lost his opportunity to cross examine the complainant and under those circumstances, merely based on the presumptions and assumptions, the Enquiry Officer recorded his minutes and thus, the charges are to be dropped. Even the said defence statement given by the petitioner was not considered either by the Disciplinary Authority or by the Appellate Authority. For all these reasons, the orders impugned are to be set aside.



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9. The learned Senior Counsel appearing on behalf of the petitioner in support of his ground states that it is a case of ‘No Evidence’, relied on the following judgments:

10. The Hon'ble Supreme Court of India, in the case of ***Nand Kishore Prasad Vs. State of Bihar and Others*** reported in ***[1978 (3) SCC 366]***, held as follows:

“24. It was urged before us that since the impugned orders do not specifically refer to any evidence or discuss it, they should be taken to be based on no evidence, whatever. While it is true that the impugned orders are unjustifiably brief, it is not correct that they are totally bereft of all reference to or discussion of evidence. There is in the impugned orders a specific reference to the Money Order coupon which the Member of the Board of Revenue has termed as a “receipt”. Indeed, the mainstay of the impugned orders is the circumstantial evidence furnished by the conduct of the appellant, in not taking any further action for the realisation of the fine.

27. In view of what has been said above, it



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is clear that this was not a case of no evidence, but of evidence which was not adequate enough to carry conviction at a criminal trial. The High Court was, therefore, right in holding that the impugned orders did not suffer from any error of law which may warrant an interference in proceedings under Article 226 of the Constitution.”

11. The Hon'ble Supreme Court of India, in the case of **Anil Kumar Vs. Presiding Officer and Others** reported in **[1985 (3) SCC 378]**, held as follows:

“6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of



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termination based on such proceeding disclosing non-application of mind would be unsustainable.”

12. The Hon'ble Supreme Court of India, in the case of ***Sher Bahadur Vs. Union of India (UOI) and Others*** reported in ***[(2002) 7 SCC 142]***, held as follows:

“7. It may be observed that the expression “sufficiency of evidence” postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, “in view of oral, documentary and circumstantial evidence as adduced in the enquiry”, would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R.A. Vashist, Ex. CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-1, referred to in the enquiry report and adverted to by the High Court,



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is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside.”



13. The Hon'ble Supreme Court of India, in the case of ***Bijlani Vs.***

Union of India and Others reported in ***[(2006) 5 SCC 88]***, held as follows:

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“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

26. The report of the enquiry officer suffers from the aforementioned vices. The orders of the



disciplinary authority as also the Appellate Authority which are based on the said enquiry report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the appellant. The Tribunal also, thus, failed to discharge its functions properly.”

14. The Hon'ble Supreme Court of India, in the case of **Roop Singh Negi Vs. Punjab National Bank and Others** reported in **[(2009) 2 SCC 570]**, held as follows:

“23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record



pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

15. The Hon'ble Supreme Court of India, in the case of ***Mohd. Yunus Khan Vs. State of Uttar Pradesh and Others*** reported in ***[(2010) 10 SCC 539]***, held as follows:

“17. The Tribunal has categorically held that absence of the appellant from duty for such a short span of time was permissible in view of the statutory rules and was bona fide. That finding was not challenged by the respondents any further and attained finality. This finding of the Tribunal leads us to the questions that in case the first



punishment of 10 days' punishment drill was unwarranted and illegal; whether any protest against such punishment, authorised the Commandant to enhance the punishment to 10 days' confinement in a cell; and whether further disobedience thereof, ought to have enabled the Commandant to initiate the disciplinary proceedings against the appellant. These questions have to be considered keeping in mind that the appellant was a member of a disciplined force and the appellate authority as well as the Tribunal had very heavily relied on the past conduct of the appellant for considering the proportionality of the punishment, though it had not been a part of the charge-sheet nor was the appellant informed of the same while issuing the second show-cause notice, giving him the opportunity to make his representation against the enquiry report.

34. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should



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contain such an article or at least he should be informed of the same at the stage of the show-cause notice, before imposing the punishment.

35. This Court in Union of India v. Bishamber Das Dogra [(2009) 13 SCC 102 : (2010) 1 SCC (L&S) 212] considered the earlier judgments of this Court in State of Assam v. Bimal Kumar Pandit [AIR 1963 SC 1612] , India Marine Service (P) Ltd. v. Workmen [AIR 1963 SC 528], State of Mysore v. K.Manche Gowda [AIR 1964 SC 506], Colour-Chem Ltd. v. A.L.Alaspurkar [(1998) 3 SCC 192 : 1998 SCC (L&S) 771 : AIR 1998 SC 948] , DG, RPF v. Sai Babu [(2003) 4 SCC 331 : 2003 SCC (L&S) 464] , Bharat Forge Co. Ltd. v. Uttam Manohar Nakate [(2005) 2 SCC 489 : 2005 SCC (L&S) 298] and Govt. of A.P. v. Mohd. Taher Ali [(2007) 8 SCC 656 : (2007) 2 SCC (L&S) 990] and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the authority may take into consideration the indisputable past



36. The appellant joined the service on 10-2-1969 and his services stood terminated vide order dated 8-4-2003. Therefore, the benefit of service rendered by the appellant for more than 34 years stood forfeited. At the time of his removal from service, the appellant was 54 years of age. Thus, he had been visited with serious punishment on the verge of retirement.

- I. Absence of the appellant from duty as Guard Commander for 25 minutes was bona fide and permissible under the statutory rules.*
- II. Imposition of punishment of punishment drill for 10 days for the said absence was unwarranted.*
- III. Protest by the appellant against the imposition of the said punishment could not warrant enhancement of punishment of the appellant for confinement in cell for ten days.*
- IV. Disobedience of the enhanced punishment could not, in this case, warrant initiation of*



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disciplinary proceedings by the Commandant concerned against the appellant.

V. The Commandant could not himself become the judge of his own cause.

VI. The Commandant could not appoint his own subordinate as the enquiry officer.

VII. The Commandant could have referred the matter to his superior officer for appropriate action in terms of the 1991 Rules.

VIII. Once the Commandant concerned appeared as a witness himself in the enquiry, he could not pass the order of punishment.

IX. The authority who initiated the disciplinary proceedings against the appellant became a witness before the enquiry officer appointed by him, who is subordinate to him in his office and also accepted the enquiry report and passed the order of punishment. Thus, the order of punishment stood vitiated.

X. The appellate authority could not consider the past conduct of the appellant to justify the order of punishment passed by the disciplinary authority without bringing it to the notice of the appellant.

XI. As the punishment order had been passed in violation of the statutory rules and the



principles of natural justice as well, it is rendered null and void. Thus, it remained inexecutable.

XII. Past conduct of an employee should not generally be taken into account to substantiate the quantum of punishment without bringing it to the notice of the delinquent employee.

XIII. The error of violating the principles of natural justice by the disciplinary authority has been of such a grave nature that under no circumstance can the past conduct of the appellant, even if not satisfactory, be taken into consideration.

16. The Hon'ble Supreme Court of India, in the case of ***Indu Bhushan Dwivedi Vs. State of Jharkhand and another*** reported in ***[(2010) 11 SCC 278]***, held as follows:

“28. An analysis of the two judgments shows that while recommending or imposing punishment on an employee, who is found guilty of misconduct, the disciplinary/competent authority cannot consider his past adverse record or punishment without giving him an opportunity to explain his position and considering his



explanation. However, such an opportunity is not required to be given if the final punishment is lesser than the proposed punishment.”

17. The Hon'ble Supreme Court of India, in the case of ***Nirmala J. Jhala Vs. State of Gujarat and Others*** reported in ***[(2013) 4 SCC 301]***, held as follows:

“42. A Constitution Bench of this Court in Amalendu Ghosh v. North Eastern Railway [AIR 1960 SC 992] , held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in Champaklal Chimanlal Shah v. Union of India [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should



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not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under : (AIR p. 1862, para 12)

“12. ... There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [, nor prior to that].”

(emphasis added)

*(See also Govt. of India v. Tarak Nath Ghosh [(1971) 1 SCC 734 : AIR 1971 SC 823. **Ed.** : See paras 10 to 14 thereof in SCC where the*



distinction between a preliminary and regular enquiry has been discussed. Tarak Nath Ghosh has however been overruled on other points in P.R. Nayak v. Union of India, (1972) 1 SCC 332 and T.V. Nataraj v. State of Karnataka, (1994) 2 SCC 32.] .)

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.”

Arguments on behalf of the Respondents:

18. The learned Government Advocate appearing on behalf of the respondents objected the said contentions by stating that based on the complaint given by Tmt.Asha, wife of Mohamed Hanifa, an enquiry was conducted by the Assistant Commissioner of Police, Vadapalani Range into the allegation of misbehaviour and sexual harassment given by the petitioner P.C.27925 Mr.KKumaresan and H.C.16038 Mr.G.Raja of R-5, Virugambakkam Police Station on 28.06.2016 in drunken mood at Miracle



Home Care situated, No.5, Abirami Nagar, 2nd Street, Virugambakkam,
Chennai – 92.

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19. Though the petitioner has stated that as per the instructions of the higher officials, he had visited the Ladies Hostel, the petitioner has not raised any question before the Inspector of Police or before the Assistant Commissioner of Police at the time of enquiry. The petitioner has stated that no F.I.R. has been registered. However, that was the mistake committed by the Police and the Punishing Authority in his order dated 26.01.2016, has stated that the Inspector of Police ought to have registered F.I.R. under Section 4 of the Tamil Nadu Women Harassment Act and he had further suggested the departmental actions against the delinquents. The enquiry was conducted by affording opportunity to the charged officials and by following the procedures as contemplated. The Enquiry Officer held that the charges against the petitioner are held proved. The Disciplinary Authority agreed with the findings of the Enquiry Officer and by affording opportunity to the delinquents to submit their objections, passed final orders, imposed the penalty of dismissal from service on 26.01.2016. The petitioner preferred an Appeal and it was rejected.



20. The learned Government Advocate appearing on behalf of the respondents contended that even if the petitioner went to the Ladies Hostel based on the instructions of the higher officials, he should have conducted enquiry only during the day time and certainly not at 11:00 p.m. during night hours and in drunken mood misbehaved with the ladies staying in the women hostel.

21. The petitioner and his co-delinquent Mr.K.G.Raja pulled out one Selvi.Vijayalakshmi and Denismary and on the hue and cry of the other inmates, the delinquents fled away from the scene. The Punishing Authority has considered that the petitioner is misfit to continue in the disciplined force and awarded the punishment of dismissal from service.

22. In the above context, the learned Government Advocate appearing on behalf of the respondents relied on the minutes of the Enquiry Officer, which was agreed by the Disciplinary Authority and the same reads as under:

“..... the names of Tmt.Asha and Tmt.Vijayalakshmi were deleted from the list of Pws., as their whereabouts not known. I am afraid



whether the delinquents are responsible for their non availability for evidence in the oral enquiry and they might have threatened them to get away from the address to protect themselves.”

23. The Disciplinary Authority has mentioned that there is no need for witness of Tmt.Asha to make such serious complaint against the delinquents affecting their moral turpitude. After careful consideration, the Disciplinary Authority had awarded the punishment of dismissal from service by complying with the principles of natural justice.

24. The Disciplinary Authority has discussed about the statement of Special Sub-Inspector (SSI) Kumaragurubaran of R-9, Valasarawakkam Law and Order that when he went to serve call notice for their appearance for oral enquiry, the neighbours in that area informed the said SSI that both the women vacated the premises five months back and their whereabouts are not known. The SSI has raised a doubt, whether the delinquents is responsible for their non availability for giving evidence in the oral enquiry. In this regard, the Appellate Authority in paragraph 4 of his order dated 22.07.2016 has stated that the Enquiry Officer had made efforts to trace out



the witnesses Tmt.Asha and Selvi.Vijayalakshmi and the neighbours were examined to know their whereabouts, but ended in vain and the Tahsildar, Mambalam has certified that both the witnesses are not living in the given address and therefore, the Enquiry Officer has rightly drawn the enquiry proceedings.

25. Based on the prosecution documents and based on the deposition of the other officials in the Police Station, the Enquiry Officer arrived a conclusion that the charges against the delinquents are held proved. Thus, there is no infirmity as such and consequently, the writ petition is liable to be rejected.

Analysis:

26. The allegations of misbehaviour and sexual harassment given by the Police Constable Mr.K.Kumaresan, who is the writ petitioner was enquired into departmentally. The incident occurred in Ladies Hostel namely Miracle Home Care situated at No.5, Abirami Nagar, 2nd Street, Virugambakkam, Chennai – 92. The learned Senior Counsel appearing on behalf of the writ petitioner attempted to establish that it is the case of 'No



Evidence' and thus, the punishment is to be set aside.

27. Let us now consider the minutes recorded by the Enquiry Officer.

The written complaint was submitted by one Tmt.Asha along with her assistant Selvi.Vijayalakshmi. It is a written complaint and therefore, the authorities have acted upon. PW3 Smt.Tamilvani, Women Grade-I Police Constable from R5 Virugambakkam Police Station, Law and Order, has deposed that the charged officials have not provided any information regarding the enquiry conducted by them in the women hostel namely Miracle Home Care. Further, she has deposed that no such instructions or orders are issued to collect information from the said women hostel.

28. Thiru.Subburoyan, Assistant Commissioner of Police, Vadapalani Circle, deposed before the Enquiry Officer that he called Smt.Asha / complainant and her assistant Smt.S.Vijayalakshmi, Thiru.S.Jeyaraman Inspector of R5 Police Station and Tmt.Tamilvani Women Grade-I Police Constable and conducted an enquiry and recorded their statements. During the enquiry by the Assistant Commissioner of Police, Vadapalani Circle and based on the statement given by the complainant and her assistant, Inspector



of Police, Special Sub-Inspector of Police and the Women Grade-I Police Constable, he had arrived a conclusion during the preliminary enquiry that the complaint against the writ petitioner and his co-delinquent Mr.G.Raja are proved. The preliminary enquiry report dated 25.11.2014 along with the statements of all the above persons were communicated to the Joint Commissioner of Police, South Zone on 25.11.2014 and the said report was also submitted before the Enquiry Officer by the Assistant Commissioner of Police, Vadapalani Circle.

29. Pertinently, the charged officials cross examined the Assistant Commissioner of Police also. Even during the cross examination, the Assistant Commissioner of Police deposed that based on the statement of the complainant, Inspector of Police and the other statement of the Special Sub-Inspector of Police and Women Grade-I Police Constable, he conducted an enquiry and accordingly, submitted his preliminary enquiry report, holding that the allegations against the charged officials are established.



30. Based on the preliminary enquiry report marked along with the statement of the complainant, her assistant, the Inspector of Police, Special Sub-Inspector of Police and the Women Grade-I Police Constable, the Enquiry Officer analysed the documents as well as the statements given by the complainants during the preliminary enquiry report before the Assistant Commissioner of Police, Vadapalani Circle and arrived a conclusion that the charges against the writ petitioner are held proved.

31. Pertinently, the Enquiry Officer considered the preponderance of probabilities, which would be sufficient to form an opinion regarding the misconduct in the departmental disciplinary proceedings. The Enquiry Officer formed an opinion that the women in ladies hostel were being harassed by the Policemen / charged officials and they were mentally depressed and out of fear. Since the delinquents are the Police personnel, the complainant remained absent during the enquiry and vacated the said premises and gone somewhere.

32. The Enquiry Officer fairly considered the situation that there is a possibility of threatening the women by the two charged officials, who all



are Policemen and they were afraid of further harassment or danger and out of fear, even they have vacated the premises and went somewhere without informing their whereabouts. Under those circumstances, the Enquiry Officer has considered the following documents:

- (1) Written complaint given by Tmt.Asha
- (2) The Statement given by the complainant Tmt.Asha during the preliminary enquiry conducted by the Assistant Commissioner of Police, Vadapalani Range.
- (3) The enquiry report of the Inspector of Police (Crime Branch) R5, Virugambakkam Police Station.
- (4) General Note Register of R5, Virugambakkam Police Station.
- (5) Note book maintained by the charged officials.
- (6) The preliminary enquiry report submitted by the Assistant Commissioner of Police, Vadapalani Range.

33. Examining all the above documents, the Enquiry Officer arrived a conclusion that the woman in the ladies hostel has given a complaint regarding misbehaviour and sexual harassment committed by the Head Constable along with another Constable. Therefore, one cannot expect that they will again appear before the Enquiry Officer, since there is a possibility



of further mental agony and pressure and under those circumstances, they have vacated the premises and went to some other place without informing their new address. Thus, considering the facts, circumstances and preponderance of probabilities, the Enquiry Officer held that the charges are proved.

34. In the context of the above enquiry proceedings, this Court has to consider whether it is a case of 'No Evidence' or 'Preponderance of Probabilities'. No doubt, the complainant Smt.Asha and her assistant Smt.S.Vijayalakshmi were not examined before the Enquiry Officer, but both of them were enquired by the Assistant Commissioner of Police, Vadapalani Range, while conducting the preliminary enquiry. Thus, along with the written complaint given by Smt.Asha, the Statement given by the complainant was recorded by the Assistant Commissioner of Police, Vadapalani Range, who in turn, furnished the copy of the said statement along with the enquiry report to the Joint Commissioner of Police and the said enquiry report was placed before the Enquiry Officer. Therefore, it is not the case, where the complainants were not at all examined. They were examined independently by the Higher Police Official namely the Assistant



Commissioner of Police, soon after the written complaint was submitted by the said Smt.Asha.

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35. That apart, the Inspector of Police also conducted an enquiry. The Woman Grade-I Police Constable of the station has clearly stated that there was no information about any such enquiry by the Police personnel in the said women hostel namely Miracle Home Care. Therefore, the Enquiry Officer considered the preponderance of probabilities and considering the fact that there is a possibility that the charged officials would have threatened the complainant as they were running a ladies hostel, which resulted, vacating hostel premises itself. All the above facts cannot be brushed aside.

36. The Disciplinary Authority in his final order of punishment dated 26.01.2016, categorically considered that the charged officials at least on their own interest should have been made efforts to produce the complainant. When they were informed by the Assistant Commissioner of Police, Vadapalani Range in proceedings dated 13.10.2015 that the names of the Smt.Asha and Smt.S.Vijayalakshmi were deleted from the list of PWs



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as their whereabouts are not known. The Disciplinary Authority further recorded that 'I am afraid whether the delinquents were responsible for their non availability of evidence in the oral enquiry and they might have threatened them to get away from the places to protect themselves. Simultaneously, I have perused the complaint of Smt.Asha against the petitioner dated 02.07.2014 in which, she was categorically stated that she shifted the Miracle Home Care services from Iyappanthangal to Virugabakkam for the past one year with eight women under her control to send them for medical attention to senior citizen'.

37. The Disciplinary Authority further recorded that 'The delinquents insisted to send two women to have sex. Again the complainant cautioned them and the delinquents left the Institution. In the absence of the complainant having gone to their native place, the delinquents came to her Institution and pulled out Smt.Vijayalkshmi and Smt.Denise Marry and on the hue and cry of other in-mates (Women), the delinquents fled away from the scene. On her return Chennai, the victim women Smt.Denise Marry and Smt.Vijayalakshmi informed her as what have happened with TS. She contacted her lawyer and lodged a complaint before the Inspector of police,



Virugambakkam on 02.07.2014.

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38. In the context of the above observations made by the Disciplinary Authority, this Court is of the considered opinion that the Police personnel enjoying a special status in the society. Ordinarily people will have fear if any Police came to their residence. In a country like India, where culturally, traditionally no one like the visit of Police in their house and by misusing the said status in the society there is every possibility that the police personnel may threaten the persons by taking undue advantage or for any other reason. It is not beyond the context in our society that the Policemen creates such fear, whenever they want to take some undue advantage, while committing such misconducts or otherwise. Thus, the Assistant Commissioner of Police, while conducting the preliminary enquiry obtained statements not only from the complainant but also from the Inspector of Police, Special Sub-Inspector of Police and Women Grade-I Police Constable and arrived a conclusion that the misconduct committed by the charged officials are established and accordingly, submitted his preliminary enquiry report, which was marked during the departmental enquiry.



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39. The Disciplinary Authority further relied on the preliminary enquiry report of the Assistant Commissioner of Police, Vadapalani Range pointing out the *modus operandi* of the delinquents for their misbehaviour with woman. It was also brought to the notice of the Disciplinary Authority that the delinquent along with Head Constable Mr.G.Raja R5 Virugambakkam Ps, SI Joshua (Transferred to traffic investigation) and another PC Thiru.Kumar of Virugambakkam were reported against for such behaviour with women and the Assistant Commissioner of Police, Meenambakkam conducted oral enquiry and initiated proved minute.

40. Under those circumstances, the Disciplinary Authority has taken into account the repeated misbehaviour of the delinquents, affecting the image of the Police Force, merits and demerits apart from the non availability of the complainant and the victim, he found that the charged officials are misfit to continue in the discipline force. Accordingly, the punishment of dismissal from service was imposed.



Principles on Preponderance of Probabilities:

41. The Phrase “Preponderance of Probability” means “more probable and rational view of the case”, not necessarily as certain as the pleading should be.

42. In the case of **Miller Vs. Minister of Pensions** [**Miller v. Minister of Pensions, (1947) 2 All ER 372**], Lord Denning, J., defined the doctrine of the balance or preponderance of probabilities in the following terms:

“(1) ... It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, “of course it is possible, but not in the least probable” the case is proved beyond reasonable doubt, but nothing short of that will suffice.”



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43. In the context of the principles of preponderance of probabilities, the authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officials are held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of 'doubtful integrity' it is not enough that doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label 'doubtful integrity'.

44. The writ petitioner along with other Policemen went to the women hostel at 11.00 p.m. during night hours and without even assisted by women Police Constable. The Grade-I Women Police Constable in the Station deposed that she was not aware of any such enquiry by the petitioner and other policemen in the women hostel. The entire facts and circumstances reveals about the probabilities of the case and to confirm the said facts, the Enquiry Officer relied upon the preliminary enquiry report



submitted by the Assistant Commissioner of Police, Vadapalani, who in turn examined the complainant and her assistant along with all other Police officials in the Station and obtained their statements.

45. The burden of proof in the departmental disciplinary proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct.

46. A three-Judge Bench of the Hon'ble Supreme Court of India in the case of *State of Haryana and Another Vs. Rattan Singh* reported in *[(1977) 2 SCC 491]*, while dealing with issue of non-examination of passengers when the allegation against the conductor was non-issuance of the tickets. The Court held that in a domestic enquiry, strict and sophisticated rules of evidence under the Indian Evidence Act may not apply and that all materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The Court held as under:

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of



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evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded.



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The ‘residuum’ rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record.....”

Conclusion:

47. In the present case, the preliminary enquiry conducted by the Assistant Commissioner of Police, Vadapalani Range, unambiguously states that the incident occurred and the charged officials had committed an act of misbehaviour and sexual harassment. Though the complainant along with her assistant has given a written complaint by attending the Police Station



and thereafter, appeared before the Assistant Commissioner of Police, Vadapalani and given a statement, subsequently, vacated the premises without informing their whereabouts. Such circumstances really created doubt in the minds of the officials. They have drawn a factual inference that there is a possibility of threat and mental pressure on the women, who were staying in the ladies hostel and they would have afraid of such frequent harassment of the Police Station itself, as every person normally opine that the Policemen always join together and in collusion may commit repeated harassment. This apprehension raised a serious concern in the mind of the Enquiry Officer, Disciplinary Authority and the Appellate Authority. Such apprehension is not based on mere presumptions or assumptions, but based on the previous conduct and misbehaviour and sexual harassment committed by the charged officials against the complainant in the Women Hostel.

48. Therefore, the case on hand, at no circumstances, be construed as a case of 'No Evidence', but it is a case of 'Preponderance of Probability'. There are sufficient evidences in the form of preliminary enquiry report and the written complaint as well as the statement given by the said complainant



before the Assistant Commissioner of Police, Vadapalani. The deposition of other prosecution witnesses also corroborates with reference to the documents examined by the Enquiry Officer and the Disciplinary Authority and for all these reasons, this Court is unable to form an opinion that the case on hand is a case of 'No Evidence', but has no hesitation in arriving a conclusion that it is the case of 'Preponderance of Probability'. Thus, this Court do not find any infirmity in respect of the findings of the Enquiry Officer as it is based on some documents and evidences and the minutes were recorded by adopting the principles of preponderance of probabilities, which is sound enough and recognised in the departmental disciplinary proceedings under the Discipline and Appeal Rules.

49. As far as the departmental disciplinary proceedings as a whole are concerned, the Rules of natural justice had been complied with and the findings of the misconduct is based on some evidences and applying the principles of preponderance of probabilities and thus, the findings of the Enquiry Officer and the Disciplinary Authority did not suffer from perversity. The quantum of punishment cannot be said to be disproportionate. The proved charges against the delinquent officials are



grave in nature and the Disciplinary Authority rightly formed an opinion that the petitioner is misfit to continue in the disciplined force.

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50. Thus, the Writ Petition is devoid of merits and accordingly, stands dismissed. No costs.

10.11.2022
(2/2)

Jeni
Index : Yes
Speaking order

To

- 1.The Commissioner of Police,
Veppery, Chennai.
- 2.The Deputy Commissioner of Police,
T.Nagar District,
T.Nagar, Chennai.



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S.M.SUBRAMANIAM, J.

Jeni

W.P.No.40535 of 2016

10.11.2022
(2/2)