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W.P.(MD) No.4083/2020

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATED: 14.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD) NO.4083 OF 2020

AND

W.M.P. (MD) NOS. 3449 & 3450 OF 2020

M.S.Murugesan

.. Petitioner

Vs.

1. The Director General of Police
Mylapore, Chennai - 600 004.
2. The Additional Director General of Police,
Law and Order,
Chennai - 600 004.
3. The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of punishment of 3rd respondent in Na.Ka.No.P1/Sa.A/Tha.Pa.14/2017, Saraga Order No.204/2017 dated 06.12.2017 as confirmed by the impugned order of the 2nd respondent in Rc.No.062109/AP.



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1(2)/2018 dated 03.10.2018 and confirmed by the 1st respondent in Rc.No. 000393/AP.1(2)/2019 dated 19.03.2019 quash the same and consequently, promote the petitioner herein as Deputy Superintendent of Police as per seniority, merit in the ensuing panel of Inspectors fit for Promotion.

For Petitioner : Mr. K.Muthu Ganesa Pandian

For Respondents : Mr. S.P.Maharajan, Spl. GP

ORDER

Assailing the impugned orders in and by which the disciplinary had inflicted the punishment on the petitioner, which has subsequently been confirmed by the appellate and the revisional authorities, the present petition has been filed.

2. It is the case of the petitioner that he was directly recruited as Sub Inspector of Police in the year 1996 and subsequently promoted as Inspector of Police in recognition of the 22 years of service rendered by the petitioner. It is the further case of the petitioner that the petitioner was visited with a charge memo in PR No.22/2015 dated 9.7.2015 u/r 3 (b) of the Tamil Nadu Police



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Subordinate Service (Discipline & Appeal) Rules, 1955, (for short 'the Rules')

leveling the following two charges against the petitioner :-

"i) Reprehensible and indiscipline conduct in having raped one Tmt.Parimala, W/o Thangavel on 25.4.2015 at D. No.25, Indian Bank Colony, K.K.Nagar, Trichy, without her consent forcibly and left the house having known that she was going to give a complaint in violation of rule 23 (2) of Tamil Nadu Subordinate Police Officers Conduct Rule, 1964;

ii) Involved in Trichy Cantonment, All Women Police Station in Crime No.,.16/2015 u/s 417, 376 IPC filed Criminal O.P. (MD) No. 8394/2015 before the Madurai Bench of Madras High Court, obtained anticipatory bail in violation of Rule 24 (1) of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964."

3. It is the further case of the petitioner that he was placed under suspension pending explanation and the petitioner submitted his explanation dated 29.6.2016 denying the charges. It is the further case of the petitioner that on the basis of the complaint by the complainant, criminal machinery was set in motion resulting in the filing of the case in S.C. No.152/2015, which case ended in acquittal of the petitioner.



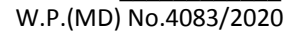
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4. It is the further case of the petitioner that departmental action is not to be initiated in respect of criminal offence alleged against an employee when the same is not in any way connected with the discharge of his administrative duties.

5. It is the further case of the petitioner that pursuant to the charge memo, being not satisfied with the explanation offered by the petitioner, enquiry was conducted, which culminated in the submission of report dated 14.7.2016 in which the first charge was held to be not proved, while the second charge was held to be proved. After furnishing the enquiry report, show cause was issued to the petitioner to submit his explanation to which also the petitioner submitted his explanation denying the charges and findings. The disciplinary authority/3rd respondent, being not satisfied with the explanation, imposed the punishment of "Postponement of increment for three years which shall operate to postpone his future increments" vide impugned order dated 6.12.2017.

6. Aggrieved by the said order, appeal was preferred by the petitioner before the appellate authority/2nd respondent, which was erroneously dismissed



8. It is the further submission of the learned counsel that when the criminal case has ended in acquittal wherein a categorical finding has been rendered that the complaint itself is false and that there has been no receipt of money by the delinquent from the complainant, the said judgment should have



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formed the basis for exonerating the delinquent. However, the enquiry officer, though adverted to the said decision to render a finding that the charge has not been proved, however, giving a go-by to the said decision, has held the second charge proved, which is only an off-shoot of the first charge, as the petitioner was well within his rights to save himself from the ignominy of arrest on account of the false complaint by seeking anticipatory bail from the hands of this Court.

9. It is the further submission of the learned counsel that the act of the petitioner in approaching this Court for obtaining anticipatory bail cannot be said to be a delinquency warranting disciplinary action, as, as against a frivolous complaint, the petitioner to safeguard himself, has, as a precaution, approached this Court for anticipatory bail, which is a right guaranteed to him under the Constitution and, therefore, the said act cannot be said to be in stark violation of the Rules.

10. It is the further submission of the learned counsel that when the first charge has been held to have been not proved and the second charge is only an off-shoot of the first charge for which the petitioner has availed the remedy



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guaranteed to him under the Constitution and the penal laws, the punishment imposed on the petitioner by the disciplinary authority, as confirmed by the appellate and revisional authorities, clearly reveal the non-application of mind on the part of the said authorities, which warrants interference at the hands of this Court.

11. It is the further submission of the learned counsel that once the criminal prosecution has ended in acquittal, the petitioner should be given the benefit of the same in the departmental proceeding, which has been launched on the identical allegation and the petitioner should be entitled for all the service benefits to which he is entitled to, including monetary and promotional benefits in accordance with FR-54. However, on an erroneous interpretation of the materials, the petitioner has been inflicted with the punishment, which deserves interference at the hands of this Court.

12. Per contra, learned Special Government Pleader appearing for the respondents submit that there is no bar for the respondents to initiate disciplinary proceedings on the same set of allegations as made in the criminal



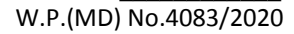
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case, as both the criminal case and the department action stand on different footing and they operate in different fields.

13. It is the further submission of the learned Special Government Pleader that the acquittal in the criminal case cannot be the basis to claim that disciplinary proceedings should also result in a similar order is totally incorrect, as the disciplinary proceedings and criminal prosecution cannot be equated, as the criminal prosecution is on the basis of the penal provisions, however, the disciplinary proceedings do not operate on such strict rules as penal prosecution and it is only on the touchstone of principles of natural justice and there is no requirement of proof beyond reasonable doubt, but a civil standard governed by preponderance of probabilities. Therefore, the continuation of the disciplinary proceedings against the petitioner inspite of the acquittal in the criminal case cannot be said to be bad or impermissible.

14. However, without prejudice to the aforesaid submissions, it is submitted by the learned Special Government Pleader that the enquiry officer though has accepted the acquittal in the criminal case as the basis for holding





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lating to judicial review of the order passed by the disciplinary authority, held as under :

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of



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statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

*13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”*

(Emphasis Supplied)

17. The above view has been reiterated by the Hon'ble Supreme Court in ***Principal Secy. Govt. of A.P. - Vs - M. Adinarayana, (2004 (12) SCC 579)***, wherein, it has been held as under :-



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“23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

* * * * *

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the



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appellant State stands allowed. Further, there will be no order as to costs.”

18. In **Director General of Police, RPF & Ors. - Vs – Rajendra Kumar Dubey (C.A. No.3820/2020 dated 25.11.20)**, the Hon'ble Supreme Court, adverting to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in *Chaturvedi's case (supra)*, held as under :-

“12.1 It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

*In **State of Andhra Pradesh v S.Sree Rama Rao**, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles*



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of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

*These principles were further reiterated in the **State of Andhra Pradesh v Chitra Venkata Rao**. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted*



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inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.

*In subsequent decisions of this Court, including **Union of India v. G. Ganayutham, Director General RPF v. Ch. Sai Babu, Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali, Union of India v. Manab Kumar Guha**, these principles have been consistently followed.*

*In a recent judgment delivered by this Court in the **State of Rajasthan & Ors. v. Heem Singh** this Court has summed up the law in following words :*

“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



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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



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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."

*In **Union of India v. P. Gunasekaran**, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the enquiry is held by the competent authority; (b) the enquiry is held according to the procedure prescribed in that behalf; (c) there is violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.*

In paragraph 13 of the judgment, the Court held that :



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“13. Under Articles 226 / 227 of the Constitution of India, the High Court shall not :

- (i) re-appreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in the case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based;*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

(Emphasis Supplied)

19. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to the correctness of the act of the disciplinary authority, but only limit itself to the manner in which the decision has been arrived at by the authorities and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authorities on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.



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20. The main bone of contention of the learned counsel for the petitioner is that the criminal case having ended in acquittal in favour of the petitioner, the enquiry officer having accepted the findings recorded in the criminal trial and exonerated the delinquent of the first charge, the second charge, which is an off-shoot of the first charge cannot stand in isolation and necessarily the same has to fail. However, without properly appreciating the same, the enquiry authority has held the 2nd charge proved, which has been accepted by the disciplinary authority to inflict the punishment on the petitioner, which is not only erroneous, but the same has been accepted by the first appellate and the second appellate authority, without proper application of mind and, therefore, the same deserves to be set aside.

21. Though such a contention is advanced, it is trite that the standard of proof required in a departmental proceedings is not in the same league as the standard of proof required to establish a charge in a criminal case. Disciplinary enquiries have to abide by the rules of natural justice and they are not governed by the 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



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beyond reasonable doubt, but a civil standard governed by preponderance of probabilities. While the standard of proof in a criminal trial would be on the basis of the provisions of the Evidence Act and other statutes, however, in the departmental proceedings, it is only on the touchstone of preponderance of probabilities, the evidence is evaluated and, therefore, it is impermissible to equate the way in which the evidence ought to be evaluated. Further, merely because an accused had been acquitted in a criminal trial cannot be the reason to exonerate the delinquent in the disciplinary proceedings.

22. The Hon'ble Supreme Court, in *Rajendra Kumar Dubey's case (supra)*, following the ratio laid down in *Gunasekaran's case* has held that the High Court, sitting under Article 226 of the Constitution, while determining its scope of interference in a departmental proceedings is only bound to determine whether (a) the enquiry is held by the competent authority; (b) the enquiry is held according to the procedure prescribed in that behalf; (c) there is violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case; (e) the authorities



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have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.

23. As aforestated, the petitioner canvases his plea on the premise of his acquittal in the criminal proceedings and, therefore, the same should stand transposed to the departmental proceedings as well and he should be exonerated of the charges.

24. In this regard, the Hon'ble Supreme Court in ***Ajit Kuma Nag – Vs – General Manager, Indian Oil Corporation & Ors. (2005 (7) SCC 764 :: MANU/SC/0584/2005)*** considering the acquittal of an accused in a criminal proceedings vis-à-vis the course of proceedings in the departmental enquiry against a delinquent, held as under :-



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“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental action are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the



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appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.”

(Emphasis Supplied)

25. From the above, it is amply evident that the mere acquittal in the criminal trial cannot be the basis to absolve a delinquent under the disciplinary jurisdiction as in the departmental enquiry, the nature of proof is not as strict as that in the criminal trial and penalty can be imposed on a delinquent by recording a finding on the basis of preponderance of probability. Therefore, the scale of evidence required in a disciplinary is not so very strict and rigid as in a criminal trial and, therefore, the acquittal by the criminal court cannot be the basis for the delinquent to derive any benefit from the criminal trial. Therefore, the contention placed on behalf of the petitioner deserves to be rejected.



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26. The decisions already pointed out by this Court with regard to the power of this Court for judicial review, now comes to the fore, so as to enable this Court to find out whether any interference is warranted with the orders impugned herein.

27. Two charges have been framed against the petitioner. The first being that the petitioner had committed sexual assault on the complainant of the criminal complaint forcibly and secondly when the criminal complaint was lodged, the petitioner had, without informing the superior officers, filed application for anticipatory bail before this Court and obtained anticipatory bail.

28. In the criminal proceeding, which has been pressed into service by the petitioner before the enquiry officer as well as before this Court, the Court below has recorded a finding that though the allegation made against the accused with regard to the charge of rape has not been proved by the prosecution, yet, the court below has categorically rendered a finding that there was an illegal relationship between the accused/delinquent and the complainant/P.W.1, which has been accepted by P.W.1/complainant, which has not been disproved by the



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petitioner/delinquent and for certain disputes between the accused/delinquent and the complainant/P.W.1, the complaint has been filed. Only on the ground that there was no rape as alleged by P.W.1/the complainant, the accused was acquitted, but the existence of an illegal relationship between the accused/delinquent and P.W.1 has been given the stamp of approval.

29. The acquittal by the court below was given a thrust by the delinquent/petitioner herein before the enquiry officer to impress that the charge of rape cannot be substantiated and, therefore, the charge has to fail. In this regard, a careful perusal of the report of the enquiry officer reveals that though the enquiry officer has merely accepted the finding of the court below that the complaint of rape alleged against the delinquent has not been proved, without traversing on the enquiry before him. The enquiry officer, unmindful of the fact that the nature of evidence before the enquiry is not of the same tenor as is required in a criminal proceeding and, therefore, without adverting to the rules and giving a finding that the decision in the criminal proceeding would cannot be countered in the departmental enquiry, has held the first charge as not proved.



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30. Curiously, the enquiry officer, though has accepted the verdict of the court below in the trial with regard to acquittal of the accused, however, has not gone into the other findings recorded by the court below with regard to the illegal intimacy between the delinquent and the complainant. It is to be pointed out that no challenge has been made by the delinquent/petitioner herein to the finding recorded by the court below with regard to the illegal intimacy between the delinquent and the complainant. The enquiry officer, thereafter, has proceeded to hold that the second charge with regard to the act of the petitioner in filing anticipatory bail application before this Court, without informing his act to his superiors has been proved and enquiry report has been filed. In essence, while the enquiry officer has held the first charge as not proved, has held the second charge as proved.

31. The disciplinary authority, acting upon the enquiry report, while accepting the report and also holding on similar lines as held by the enquiry officer with regard to the first charge, however, has rendered a further finding that the delinquent has violated the provisions of the Conduct Rules by having



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illegal intimacy with the complainant and has been implicated as an accused in a crime and brought disrepute to the disciplinary force, which stands proved through the oral and documentary evidences, however, has held that the first charge has not been proved and that only the second charge has been proved and has proceeded to impose the punishment on the petitioner/delinquent for the second charge alone, while exonerating the petitioner/delinquent of the first charge. The first appellate and the second appellate authorities have also fell in line with the said view taken by the disciplinary authority.

32. This Court is perplexed as to how the disciplinary authority as well as the appellate authorities have gone about accepting the said enquiry report in and by which the enquiry officer has accepted the judgment in the criminal trial which has held that no sexual assault in the form of rape was committed by the petitioner on the complainant, but has clearly returned a finding that there was illegal intimacy between the petitioner and the complainant. When the enquiry officer has taken into consideration the decision in the criminal trial to negate the charge against the delinquent, has to consider the decision in full and not in a piecemeal manner. It is further to be pointed out that the evidence which is



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required to be tabled in a criminal proceeding and in a disciplinary proceeding are totally different, as has been enumerated by this Court in an umpteen number of decisions and such being the case, the enquiry officer should have considered the evidence on the basis of preponderance of probabilities and not on the scale of the Evidence Act and the said finding of the enquiry officer is wholly arbitrary and vitiated.

33. Further, the disciplinary authority and the appellate authorities have accepted the enquiry report but have gone on to hold that the charge of rape is not made out on the basis of the evidence in the criminal trial, but the illegal intimacy has been very well held to be made out. When such being the undisputed position and when it is the clear stand of the petitioner himself by pressing the judgment into service to negate the first charge, this Court is at a loss to understand the basis on which the petitioner has been exonerated of the first charge, more especially given the fact that the second charge is the off-shoot of the first charge. Further, it is also to be pointed out that there is clear violation of the provisions of the Conduct Rules by the petitioner, which has been stated by the disciplinary authority and such being the case, when the charges have been



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framed for a major penalty, merely because the charge in its entirety has not been proved cannot be the basis to totally exonerate the petitioner, when the act of the petitioner is not in consonance with the conduct rules, more especially a person belonging to a disciplined force.

34. As has already been adverted to by this Court supra, the decision of the Hon'ble Supreme Court, in *Rajendra Kumar Dubey's case*, subscribes the view of this Court that the arm of judicial review of this Court, sitting under Article 226 of the Constitution, would definitely extend to examination of the findings of the disciplinary proceedings, in the following circumstances :-

(a) the authorities have disabled themselves from reaching a fair conclusion by some considerations which are extraneous to the evidence and merits of the case;

(b) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; and

(c) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;



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35. As stated above, when the trial court, in the criminal trial, has given a finding that the petitioner/accused was having an illegal relationship with the complainant, though the act of the petitioner/accused does not stand quantified as rape and only in that backdrop, had acquitted the accused, the finding having been acted upon by the enquiry officer, the decision should be accepted and acted in its entirety and dissection in any form is impermissible. The above factum, having been adverted to by the disciplinary and the appellate authorities, but still holding the act of the petitioner is in violation of the conduct rules, however, they have failed to correct the error, which had been committed by the enquiry officer and have exonerated the petitioner of the first charge and in that backdrop, the findings arrived at is wholly arbitrary and capricious and cannot be allowed to stand.

36. Exonerating a delinquent in the absence of material is one thing and exonerating a delinquent even in the presence of material, but only taking a portion of the material, which is beneficial to the delinquent is another thing. That cannot be the yardstick with which the report can be allowed to stand, more so, when the delinquent belongs to a disciplined force.



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37. It is to be pointed out that the petitioner is a member of a disciplined force and a great amount of discipline, coupled with integrity and honesty is required of individuals holding the posts in the disciplined service. The members of the disciplined force should act as role models for the common man and cannot be the perpetrators of crime, more so against women folk, and any deviation from the path would necessarily have to result in the invocation of the provisions of the conduct rules, which alone would make the disciplined force to hold their head high. The petitioner, being a member of the disciplined force, should have the highest moral standards and any infraction would necessarily have to be cured, as otherwise, it would have a cascading effect in the system, thereby eroding discipline.

38. However, unmindful of the above, inspite of the fact that a categorical recording has been made by the trial court with regard to the illegal relationship of the petitioner with the complainant, the enquiry officer has not properly appreciated the said material and has exonerated the petitioner and the disciplinary authority, though has recorded the finding of illegal relationship of



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the petitioner with the complainant, however, erroneously has exonerated the petitioner of said charge, which is wholly unsustainable and is against the materials available on record. Therefore, prudence warrants that the matter should be remanded to the disciplinary authority/3rd respondent to proceed from the stage of enquiry.

39. For the reasons aforesaid, the impugned order passed by the disciplinary authority as affirmed by the first and second appellate authorities are set aside and the matter is remanded to the 3rd respondent/disciplinary authority to proceed from the stage of enquiry afresh based on the materials available on record and as pointed out by this Court. The disciplinary authority/3rd respondent is directed to follow the procedure as contemplated under the Rules by providing reasonable opportunity to the petitioner and pass appropriate orders in accordance with law. Such exercise shall be completed within a period of twenty four (24) weeks from the date of receipt of a copy of this order.



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40. This writ petition is allowed with the aforesaid observations and directions. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

14.12.2022

Index : Yes / No

Internet : Yes / No

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To

1. The Director General of Police
Mylapore
Chennai-004.
2. The Additional Director General of Police
Law and Order
Chennai-004.
3. The Deputy Inspector General of Police
Thanjavur Range
Thanjavur.



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M.DHANDAPANI, J.

GLN

W.P. (MD) NO.4083 OF 2020

14.12.2022