

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4659 OF 2010

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| 1. State of Maharashtra, Through its Secretary, Home Department, Mantralaya, Mumbai-32. | Petitioners/ (Ori. Respondents on R.A.) |
| 2. The Additional Police Commissioner, Civil Lines, Nagpur. | |
| 3. The Police Superintendent, Crime Branch, Nagpur City, Nagpur. | |

-Versus-

Purushottam N. Chaware, Aged about 40 years, Occ. - Police Constable, Resident of Nagpur.	Respondents/ (Ori. Applicant on R.A.)
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Mrs. K. S. Joshi, Addl. G.P. for the petitioners.
Ms Bhavya Dhruv, counsel for the respondent.

**CORAM : ROHIT B. DEO AND
M.W.CHANDWANI, JJ.**

DATE : 28TH JUNE, 2023

JUDGMENT (Per : M. W. Chandwani, J.)

The petition challenges the judgment dated 03/07/2008 passed by the Maharashtra Administrative

Tribunal, Nagpur Bench, Nagpur (MAT) in Original Application No.53 of 1996.

2. The respondent was working as a Police Constable and was posted at Ajni Railway Station at Nagpur. The respondent was served with a charge-sheet on 09/03/1992, on the allegations that accused namely Dhananjay while running away, left the suitcase containing gold and silver ornaments. In spite of depositing suitcase in Municipal Corporation Warehouse, the applicant took the suitcase to the house of Vijay Shivankar and took out some ornaments from the aforesaid suitcase and thereafter deposit the suitcase in his house. In the search of house of the respondent on 17/06/1992, the stolen ornaments worth of Rs.665/- were recovered.

3. On the above said charges, the departmental enquiry was conducted against the respondent. In the enquiry, the charge Nos.1 and 2 were not proved. The Enquiry Officer recorded the finding of guilt in respect of charge Nos.3 and 4 regarding taking away of ornaments from the suitcase and

hiding the same in his house. The Enquiry Officer suggested the punishment of deduction of Rs.50/- per month from the salary of respondent for the period of one year. The Disciplinary Authority did not agree with the punishment proposed. After issuing a show cause notice, the Disciplinary Authority inflicted the punishment of keeping the respondent on original pay scale for five years. In the appeal, the order passed by the Disciplinary Authority was confirmed. The respondent filed Original Application No.53 of 1996 before the MAT. After hearing, the MAT allowed the original application of the respondent and set aside the findings recorded by the Enquiry Officer as well as the punishment inflicted by the Disciplinary Authority.

4. Feeling aggrieved by the impugned judgment and order dated 03/07/2008, the petitioners filed this writ petition.

5. Heard learned Additional Government Pleader Mrs.Joshi for the petitioners and learned counsel Ms.Bhavya Dhruv for the respondent. We have gone through the

impugned judgment and order as well as the record of the enquiry.

6. Perusal of the impugned judgment and order shows that the MAT has thoroughly discussed the enquiry report and after going through the record, the MAT has held that the witnesses, which were necessary to prove charge Nos.3 and 4, were not examined by the Enquiry Officer. The Enquiry Officer merely relied on the statements recorded by the Police. Therefore, the MAT finds that the charge Nos.3 and 4 have not been proved.

7. Learned Additional Government Pleader Mrs.Joshi submits that the burden of proof in enquiry and criminal trial are different. In the departmental enquiry, the principle of proof is of preponderance of probability, whereas, in criminal trial, the strict proof beyond reasonable doubt is required. The MAT ignored this principle of law and went on scrutinizing the evidence and erroneously held that the charge Nos.3 and 4 are not proved against the respondent.

8. Per contra, the learned counsel for the respondent submitted that the case in hand is a case of no evidence. Only the statement recorded by the Police under section 161 of the Code of Criminal Procedure have been relied on by the Enquiry Officer without examining the witnesses. According to her, even on the touchstone of preponderance of probability, the alleged charges are not proved against the respondent. She supported the findings recorded by the MAT and sought dismissal of the petition.

9. Record shows that the respondent was also prosecuted for the offence punishable under sections 409, 411, 271 and 218 read with section 34 of the Indian Penal Code along with other accused Dhananjay before the Additional Chief Metropolitan Magistrate, Mumbai. By the judgment and order dated 30/07/1994, the respondent was acquitted of the above said offences.

10. We are aware of the fact that mere acquittal of the criminal trial does not vitiate the departmental enquiry. We

agree with the submission of learned Additional Government Pleader Mrs. Joshi that the criminal trial is to be decided on the touchstone of proof beyond reasonable doubt. Whereas in departmental enquiry, the principle of preponderance of probability is applicable while considering whether a particular fact is proved or not. Though, we do not endorse the findings recorded by the MAT that the statement of the co-accused recorded by the Police during investigation is not admissible in departmental enquiry as evidence being hit by section 25 of the Evidence Act. This principle will apply in the criminal trial, but in departmental enquiry, we do not think that the statement of the co-accused is not admissible in the evidence, provided it is duly proved. But we agree with the findings of the MAT that without examining the persons, whose statements were relied. The Enquiry Officer should not have concluded the guilt of the respondent on the basis of mere statements filed before the Presenting Officer, because the persons, whose statements were relied, have not been examined by the Presenting Officer in the departmental enquiry. At least, there must be something in the form of oral evidence from the witnesses whose statements have

been relied that their statements were recorded and the contents of the statements are correct. This is necessary not only for the purpose of proving the fact contained in the statements, but also for giving opportunity to the respondent to cross-examine the persons. Therefore, without anything on record, only from the statements, the Enquiry Officer presumed the proof of act of taking out the ornaments from the suitcase and finding of those ornaments from the house of the respondent even on the touchstone of preponderance of probability. Therefore, the MAT has rightly held that the alleged acts of the respondent have not been proved by the fact by evidence. So this is a case of no evidence. We do not find any reason to disturb this finding of the MAT. Therefore, no interference is required in the findings of the MAT in writ jurisdiction.

11. Hence, the writ petition is dismissed. No order as to costs.

(M.W.CHANDWANI, J)

(ROHIT B. DEO, J)