



W.P.No.17839 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:22.06.2023

Delivered on: 28.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.17839 of 2019

M.Ravi

... Petitioner

Vs.

1.The Principal Security Commissioner &
Disciplinary Authority
Railway Protection Force
Integral Coach Factory
Chennai-38

2.The Director-General
Railway Protection Force
Govt of India
Ministry of Railways
(Railway Board)
New Delhi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in connection with the impugned orders passed by him in Ref.No.M/XP/227/07/2010 dated 11.12.2018 and confirmed by the 2nd respondent in Ref.No.2019/SEC(E)/DAr/3/19 dated 29.04.2019 and quash



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the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr.J.Raja Kalifulla,Senior Counsel
for
Mrs.M.Thenmozhi

For Respondents : Mr.P.T.Ramkumar,
Standing Counsel for Railways

ORDER

The Writ Petitioner has filed the above Writ Petition seeking issuance of a Writ of Certiorarified Mandamus to quash the impugned order of the 1st respondent dated 11.12.2018 and confirmed by the 2nd respondent on 29.04.2019 and to consequently direct the respondents to reinstate the petitioner, with all consequential service and monetary benefits.

2. The case of the petitioner, as seen from the affidavit filed in support of the Writ Petition is that, the petitioner entered services of the respondents as a Police Constable on 01.04.1987. The petitioner was falsely implicated in a criminal case file by one M.Ekambaram, alleging that the petitioner had demanded an amount of Rs.700/- per month as illegal gratification for selling



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food items on a handcart near Perambur Carriage Works Railway gate.

3. It is the case of the petitioner that the amount was demanded only on behalf of the Inspector, Mr.Durai and there was no direct allegation against the petitioner. However, Crime No.2/2008 came to be filed on the file of Central Bureau of Investigation, ACB,SPE, Chennai. A trap was organised and records were created showing as if the petitioner received the contraband and he was trapped. It is the specific case of the petitioner that he did not demand any illegal gratification from the complainant. However, charge sheet was laid before the Principal Special Judge, CBI cases on 31.12.2007 and charges were framed and the case was transferred to Special Judge, CBI Cases, Chennai in C.C.No.2 of 2008. A similar case was also initiated against the inspector, Mr.Durai.

4. It is the further case of the petitioner that based on the charge sheet in the criminal case, the 1st respondent issued a charge memo on 16.04.2010 under the RPF Act, containing the very same set of allegations. Similarly,



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against the Inspector of Police also on the same set of allegations, a charge memo was issued alleging violation of Rs.146(1) of Railway Protection Force Rules, 1987 apart from the other violations that were alleged against the petitioner.

5. It is further contended that in the Departmental enquiry three witnesses were examined in respect of the petitioner's case and one witness was cited as a prosecution witness. All the records referred to in the criminal case were relied on for the purpose of proof of the charges in the departmental enquiry. The 3rd respondent conducted an oral enquiry against the petitioner. The very procedure adopted in appointing two separate enquiry officers to conduct enquiry against two persons involved in a same transaction is according to the petitioner, in violation of R.163 of The Railway Police Protection Force Act, 1987. However, since the co-delinquent, the Inspector of Police did not object, the authorities proceeded against both the petitioner and the respondent separately.



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6. It is the specific case of the petitioner that all the witness cited in the criminal case were cited in the departmental enquiry and all the documents relied on by the prosecution in the criminal case have also been the basis of the charges in the departmental enquiry.

7. The co-delinquent viz., Inspector of Police approached this Court in W.P.No.23759 of 2012 and sought for a direction to keep the disciplinary proceedings in abeyance and this Court was pleased to grant an interim order. The petitioner filed W.P.No.24120 of 2012 challenging the charge memo proceedings and at the time of admission, an interim injunction was granted. In the meantime, after contest, the Sessions Judge in and by order dated 17.10.2014 acquitted the petitioner in C.C.No.2 of 2008. It is also stated that the enquiry officer conducted an enquiry against the Inspector and held that charges against the said Inspector were not proved and the disciplinary authority also passed an order on 31.12.2014 agreeing with the enquiry officer and dropped the charges against the Inspector and the said Inspector was exonerated from the charges and allowed to retire from service, entitling



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him to all retirement benefits. The specific grievance of the petitioner is that despite the co-delinquent having been let off, the petitioner was discriminated and even though the Sessions Judge had acquitted the petitioner on the very same set of facts, the disciplinary authority imposed the punishment of compulsory retirement from service. The petitioner preferred a statutory appeal before the 2nd respondent, which also came to be dismissed on 29.04.2019, confirming with the findings of the disciplinary authority. The petitioner complains of violation of principles of natural justice and discrimination besides also attacking the impugned proceedings on the ground that the order passed by the appellate authority was a non speaking order and it was violation of service rules.

8. The respondents have filed a counter stating that the enquiry was conducted in a fair manner and all reasonable opportunities were extended to the petitioner to defend himself in accordance with the principles of natural justice and the impugned proceedings do not warrant any interference from this Court. It is also contended that in the criminal case, the petitioner was



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acquitted only by giving benefit of doubt and not on merits. There is no embargo on the respondents to proceed with the departmental proceedings as it is entirely different from criminal proceedings.

9. This Court has heard Mr.J.Raja Kalifulla, learned Senior Counsel for Mrs.M.Thenmozhi appearing for the petitioner and Mr.P.T.Ramkumar, learned Standing Counsel for the respondents.

10. This Court has also carefully perused the various materials placed on record by the respective counsel and also the decisions relied on by the learned counsel to fortify their respective submissions.

11. Learned Senior counsel for the petitioner would first and foremost contend that it was not the case of the respondents themselves that the petitioner had never demanded illegal gratification for himself and admittedly the demand was made only on behalf of the Inspector. The learned Senior counsel would invite the attention of this Court to the deposition of the



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complainant who was examined as prosecution witness No.2. It is seen that it is the complainant's case that he approached the Inspector, the co-delinquent who demanded Rs.2,000/- to permit him to run the shop and after bargaining it was agreed that Rs.700/- would be paid by the complainant and the Inspector had instructed the complainant to send the amount through the petitioner. Thus, this Court is able to see that the very basis of the complaint itself, right at the inception was that the petitioner was only acting on behalf of the Inspector of Police and he did not demand any illegal gratification on his own account. The trap laid by the CBI was only based on the complaint of the prosecution witness M.Ekambaram. However, it is seen that Inspector of Police/CBI/ACB Chennai who was examined as P.W.3 has sought to improve the case of the complainant that for permitting the stall and selling the food items, the Inspector as well as the petitioner had demanded a monthly sum of Rs.700/- to be paid to them. This was never the case of the complainant in the first place. P.W.3 who entered the scene much later did not have any personal knowledge of what had transpired between the complainant and the Inspector of Police. The specific case of the complainant is that he met only the



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Inspector of Police and his negotiation was also only with the Inspector of Police. It was not even his case that he met the petitioner at that time. The mere fact that the petitioner had gone to the spot to collect the money and he was trapped and caught red handed would at best confirm the allegations in the complaint viz., the amount to be sent through the petitioner, to the Inspector of Police.

12. Learned Senior Counsel would also invite the attention of the Court to the evidence of P.W.4 N.Lavakumar who investigated the criminal case against the petitioner as well as the co-delinquent. Though P.W.4 states that he examined 24 witnesses, excepting the complainant, admittedly none of the other witnesses were examined in an attempt to prove the charges.

13. The disciplinary authority found that there was no evidence of the petitioner having contravened R.146.7 (II) However, while confirming the findings, it has been held that the petitioner has contravened the said 146.7(II) as well. This only goes to show that there has been no proper



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application of mind on the part of the disciplinary authority, especially after having found specifically that there is no evidence to establish contravention of R.146.7 (ii) the disciplinary authority could not have found otherwise in the concluding portion of the findings.

14. Learned Senior counsel would also invite the attention of the Court to the findings that “a team consisting of CBI officers, respectable independent witnesses and complainant need not stage manage a case against any RPF staff. The complainant seems to be genuine and the acceptance of cash by the charged employee seems to have occurred even though there are procedural lapses in registering of the entrustment mahazar and recovery mahazar by the trap laying officer of CBI.”

15. However, as already seen and discussed, excepting the complainant and CBI officers none of the independent witnesses have been examined and it is not known as to how the disciplinary authority can give such findings contrary to admitted and available evidence. The observation of the



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disciplinary authority that the charged employee used the words “ A Million Dollar Questions” repeatedly would go to show that the petitioner is money mind and therefore he would go to any extent for monetary benefit is clearly perverse.

16. Learned Senior counsel would also invite the attention of the Court to the findings in C.C.No.2 of 2008 where the Principal Special Judge for CBI Cases, Chennai, has found that it was a case of no evidence. The learned Senior counsel for the petitioner would take this Court through relevant paragraphs in the said judgment of the Special Judge for CBI cases and contend that when the same witnesses had been examined in the criminal case and same documents had been relied on in both the cases and ultimately the Criminal Court had found it is a case of no evidence, the disciplinary authority could not have given any other finding and ought to have dropped the charges. In this regard, learned Senior counsel would also place specific emphasis on the fact that co-delinquent, Inspector of Police against whom the main allegation made by the complainant, was let off and not only the charges



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dropped against him but he was also allowed to retire. Therefore, the very action of the respondents amounted to discrimination warranting interference from this Court under Article 14 of the Constitution of India.

17. Per contra, learned counsel for the respondents would submit that in a Writ Petition under Article 226, the Court cannot re-appreciate evidence. Moreover, he would contend that in the criminal case only benefit of doubt was given to the petitioner. The disciplinary authority having taken a lenient view would only goes to show that there has been proper application of mind and prayed for dismissal of the Writ Petition.

18. Learned Senior counsel for the petitioner would rely on the following judgments;

i) ***Kuldeep Singh Vs. Commissioner of Police and others***, reported in **(1999) 2 SCC 10**, wherein the Hon'ble Supreme Court referring to the power of the High Court under Article 226 to interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer



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as a matter of course, held that though the Court cannot sit in appeal over the findings and assume the role of an appellate authority, yet the power of judicial review available to the High Court under the Constitution of India empowers it to interfere with conclusions reached by the disciplinary authorities when there was no evidence to support the findings or the findings recorded were such as those that could not have been reached by an ordinary prudent man or when the findings were perverse or made at the dictates of superior authority.

ii) ***Balbir Chand Vs. Food Corporation of India Ltd and Others***, reported in (1997) 3 SCC 317, for the proposition that when there was common cause of action in respect of same transaction and more than one delinquent officers were involved, it was necessary and salutary to conduct a common enquiry against all the delinquent officers as it would avoid multiplicity of proceedings.

iii) ***Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad***, reported in (2010) 5 SCC 77, where the Hon'ble Supreme Court held that treating case of co-delinquents differently and to impose



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different punishments would not be proper.

iv) ***G.M.Tank Vs. State of Gujarat and Others***, reported in (2006) 5 SCC 446, for the proposition that when departmental proceedings were based on identical and similar set of facts and the charge in the departmental case and the charge before the Criminal Court are one and the same and same set of documents were relied on in both the proceedings and same witnesses also being examined in both the proceedings and when the Criminal Court had come to the conclusion that the prosecution had not proved the guilt alleged by them beyond reasonable and acquitted the delinquent by a judicial pronouncement with a specific finding that the charge had not been proved, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand, especially when the department had awarded punishment in the departmental proceedings.

v) ***Roop Singh Negi Vs. Punjab National Bank and Others***, reported in (2009) 2 SCC 570, where the Hon'ble Supreme held that when the appellate authority did not apply its mind to the contentions raised by the appellant and no reasons were assigned in support of the conclusion and in



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the absence of a decision being arrived at on some evidence, that too legally admissible, the Apex Court held that even though provisions of Evidence Act may not be applicable in departmental proceedings, yet the principles of natural justice would definitely apply and the findings based on surmises and conjunctures could not be sustained.

vi) ***Ram Chander Vs. Union of India and Others***, reported in (1986) **3 SCC 103**, for the proposition that it is incumbent for the appellate authority to not only give a hearing to the delinquent but also pass a reasoned order, dealing with the contentions raised in appeal, as such reasoned decisions by Tribunal would alone promote public confidence in the administrative process. The Apex Court also held that consideration of fair play and justice would also require personal hearing to be given in the appeal proceedings.

vii) ***Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd and another***, reported in (1999) **3 SCC 679**, where the Hon'ble Supreme Court held that when there was a simultaneous continuance of criminal proceedings and departmental enquiry, it was open for both the proceedings to be continued independently. However, the Hon'ble Supreme Court set aside the ex-parte



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findings recorded by the disciplinary authority on the ground that though the proceedings were based on same set of facts, which was sought to be proved by same witnesses and the Court had already acquitted the appellant by rejecting the prosecution story.

viii) *State of Uttar Pradesh and Ors Vs. Raj Pal Singh*, reported in (2010) 5 SCC 783, for the proposition that when the charges and delinquency being same and identical and relating to one and the same incident, it would be discriminatory to deal with delinquents differently while awarding punishments.

ix) *Man Singh Vs. State of Haryana and Others*, reported in (2008) 12 SCC 331, where the Hon'ble Supreme Court reiterated the concept of equality enshrined under Article 14 of the Constitution of India and held that it would extend to an individual as well not only when he is discriminated against the matter of exercise of right but also in the matter of imposing liability upon him. The Hon'ble Supreme Court has further held equals have to be treated equally even in the matter of executive or administrative action and the Doctrine of Equality is a synonym of fairness in the concept of justice



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and stands as the most accepted methodology of Governmental action. In the said case also similarly placed delinquents were treated differently and one of the delinquents was exonerated on the ground of acquittal by the Criminal Court whereas in the case of other delinquents, punishment was awarded. The Hon'ble Supreme Court set aside the punishment awarded in the departmental proceedings.

X) *Robert Stuart Wauchope Vs. Emperor*, reported in *ILR Vol LXI page 168*, was relied on by the learned Senior Counsel to explain the concept of Honourable acquittal. The Division Bench of Calcutta High Court held that :

“ The expressions “honourably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts marital and other extra-judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the



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charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what the Government authorities term “honourably acquitted”.

19. On the other hand, learned counsel for the respondent would rely on the following judgments:

i) ***Union of India and Others Vs. P.Gunasekaran***, reported in **(2015) 2 SCC 610**, to contend that the Hon'ble Supreme Court has clearly laid down guidelines regarding the scope of exercise of power under Article 226 in a disciplinary proceedings. The Hon'ble Supreme Court has held as follows:

“ Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers



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under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a 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 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;



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h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

13. Under Article 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 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.

ii) He would also place reliance on the judgment of the Hon'ble Supreme Court in ***State of Rajasthan and Ors Vs. Heem Singh***, reported in ***2021 (2) CTC 332***, to contend that the exercise of judicial review embodies the rule of restraint and scope of interference is also very limited. The Hon'ble Supreme Court has held as follows:



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“ In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and



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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 PART J 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



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there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

Ultimately, the Apex Court on the facts of the said case before it held that disciplinary enquiry was not governed by proof beyond reasonable doubt or by rules of evidence as is governed in criminal trials and when a grave charge alleging conspiracy involved in death of a person was in place, the punishment awarded to seek re-instatement of such an employee would erode credibility and public confidence in the image of Police force.

iii) ***State of Karnataka and another Vs. Umesh***, reported in (2022) 6 SCC 563, where the Hon'ble Supreme Court held that principles that govern a disciplinary enquiry are distinct from those which apply to a criminal trial and that when the enquiry was conducted in accordance with principles of natural justice and the findings were sustainable with reference to the evidence



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adduced during enquiry, then the High Court cannot exercise powers under Article 226 and wrench upon domain falling within the disciplinary jurisdiction of the employer.

iv) *Abdul Raguman Vs. The Deputy Inspector of Police*, reported in **2018 SCC Online Mad 2599**, where the Division Bench of this Court held that mere acquittal in a criminal case would not absolve the delinquent from undergoing the disciplinary enquiry and where the accused was acquitted only on benefit of doubt it cannot be said that the departmental proceedings are liable to be quashed.

v) *Management of Bharat Heavy Electricals Limited Vs. M.Mani*, reported in **(2018) 1 SCC 285**, where the Apex Court held that when the departmental enquiry was held legally and properly no interference is warranted to alter the punishment awarded.

vi) *General Manager (Operations) State Bank of India and Another Vs. R.Periyasamy*, **(2015) 3 SCC 101**, where the Hon'ble Supreme Court held that the Writ Court was not entitled to go into the question of adequacy of evidence and come to a conclusion that evidence was not sufficient to hold the



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respondent guilty. The Hon'ble Supreme Court also reiterated the settled position of law that standard of proof in a criminal case is proved beyond all reasonable doubt, but the proof in a departmental proceeding is merely the preponderance of probabilities and acquittal based on benefit of doubt would not stand on par with clean acquittal on merit after a full fledged trial.

20. At the outset, this Court has no quarrel with the settled position of law with regard to departmental proceedings being conducted or proceeded with despite an order of acquittal by criminal Court. The law is now too well settled on this aspect, especially considering the scope of criminal trials and departmental proceedings for disciplinary action while in criminal cases the prosecution has a duty to prove the charges or crime beyond all reasonable doubt in order to fix the accused and make him liable for punishment, whereas when it comes to disciplinary proceedings or departmental enquiry by an employer such strict proof is not required and even a mere preponderance of probability would suffice to hold the charges proved.



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21. With regard to the learned Senior counsel's contention that a common enquiry ought to have been held and the procedure adopted by the respondents was in violation of their rules, this Court is unable to accept the said contention, that too at this length of time. Moreover, as admitted even by the petitioner, the other co-delinquent did not chose to throw the same line of the petitioner and seek for common enquiry. In any event, when two separate and full fledged enquiries have been conducted and proceedings have also concluded it is now too late for the petitioner to canvass before the Writ Court that there has been a violation of Rs.146.7(ii) and seek to quash the impugned proceedings on this ground. The said contention of the learned Senior Counsel for the petitioner is therefore not acceptable.

22. Coming to the power of the High Court to interfere with the findings of the disciplinary authority in departmental enquiry proceedings, as seen from various judgments relied on by the counsel on either side, the High Court is not powerless. In cases where there is perversity writ large on the face of the impugned proceedings or when findings are based on no evidence,



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the High Court is well within its power to interfere under Article 226 of the Constitution of India. Infact, even in the judgment relied on by the learned counsel for the respondents viz., *Union of India and Others Vs. P.Gunasekaran*, reported in *(2015) 2 SCC 610* , the Hon'ble Supreme Court has held that the High Court is entitled to see whether the finding of fact is based on no evidence. Though this judgment of the Hon'ble Supreme Court is relied on by the counsel for the respondents to contend that under Article 226 of the Constitution of India the High Court cannot reappraise evidence or go into the adequacy of evidence this Court is of the view that this judgment has to be read harmoniously. The Hon'ble Supreme Court has clearly held that in exercise of powers under Article 226 the High Court can and is well within its power and right to see if the finding of fact is based on no evidence. Therefore, to rely on a subsequent paragraph and state that the High Court cannot go into the adequacy of evidence or interfere when there is some legal evidence on which findings can be based, cannot be read as if the power of the High Court to even find that the finding of fact is based on no evidence stands diluted. The ratio laid down by the Hon'ble Supreme Court can only be



23. This Court has also perused the findings of the disciplinary authority as well as the appellate authority. The disciplinary authority, as already discussed by this Court, has even got the basic facts wrong i.e., the very complaint of P.W.2 based on which the charges came to be framed. Infact the disciplinary authority has also found that there were procedural lapses in registering of the entrustment mahazar and recovery mahazar. The disciplinary authority has relied on a non existent list of “respectable independent witnesses” when admittedly none of the witnesses were examined at the departmental enquiry.

24. This Court also finds force in the argument of the learned Senior



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counsel for the petitioner that when the charges were identical in the criminal case as well as the departmental proceedings, the documents relied also being one and the same and even the witnesses are also one and the same, then in such circumstances, as laid down by the Hon'ble Supreme Court as referred to herein supra, the departmental proceeding cannot take a different view, when the Criminal Court had acquitted the delinquent.

25. With regard to the contention of the learned counsel for the respondents that the Criminal Court has acquitted the petitioner only giving him a benefit of doubt, this Court has perused the judgment of the Special Judge, where the Criminal Court has relied on the written compliant which is the origin of the proceedings. The Criminal Court found that even from the criminal complaint it could not be taken that there was a demand for illegal gratification made by the petitioner as alleged in the charge sheet. The Criminal Court also found that the complainant was examined as P.W.2 has not let in any evidence that demand for illegal gratification was made after 21.07.2007. The Criminal Court has extracted the evidence of P.W.2



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complainant which goes to show that the complainant himself has not asserted that there was a demand for illegal gratification. The Criminal Court also found that P.W.2 had mentioned that he never met the first accused in May 20007 as alleged in the written compliant Ex.P4 and has further stated that Ex.P4 was not written by him and he does not even know as to who wrote it and stated that he gave only an oral complaint to the CBI. Therefore, based on the available materials before it, the Criminal Court has doubted the very genuineness of the written compliant Ex.P4 itself.

26. The Criminal Court has also examined the oral evidence of the independent official witness, one K.Ramesh and the official witness, P.W.4 who have stated that the tainted currency notes were not recovered from the second accused viz., the petitioner. The Special Court also found that the complainant had not established and proved that the tainted currency notes were transferred from the possession of the complainant to the petitioner and that thereafter the same were recovered from the possession of the petitioner. The finding of the Criminal Court in this regard as follows:



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“In view of the infirmities available in the investigation conducted by the P.W.4 and P.W.10 as discussed herein before a strong doubt arises in the entire case of the complainant. Since the complainant has not established and proved that the tainted currency notes were transferred from the possession of P.W.2 to the possession of A-2, it is concluded that the prosecution has failed to establish and prove that A-2 demanded any amount as illegal gratification on 06.08.2007 and received the bribe amount from P.W.2 at 12.30 hours on 07.08.2007.”

27. This Court, on an overall reading of the judgment of the Criminal Court finds that the Criminal Court has acquitted the petitioner as well as the Inspector of Police, not merely on the ground that prosecution has failed to prove the charges beyond reasonable doubt, by giving benefit of doubt, but on thorough and careful examination of the entire evidence available on record. Therefore, merely because the Criminal Court had summarised in the concluding paragraphs that the complainant has miserably failed to establish and prove the charges prescribed as against both the accused beyond all



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reasonable doubts by placing reliable and acceptable evidence and by giving benefit of doubt to the accused, they are liable to be acquitted from the charges, does not straight away imply that it was a case which has been decided, acquitting the petitioner only on the ground of “benefit of doubt”. As already discussed, the Criminal Court has given cogent reasons and discussed the entire evidence available on record to find that the prosecution had not proved the charge at all, in the first place.

28. Even otherwise, as the Hon'ble Supreme Court has laid down that for an identical set of charges there cannot be any discrimination and equals have to be treated equally. In this case also, this Court finds that when the Inspector who was the main accused in the original complaint itself was allowed to retire and get all his benefits, it would not be fair and equitable to adopt a different yardstick when it came to the petitioner who was his subordinate only and award him a punishment and deny him all his benefits. Further, this Court is also of the view that considering the nature of the complaint, one being directed against the Inspector of Police for demanding



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bribe for allowing the complainant to run his cartshop near Perambur Carriage Works Railway Gate, the complainant himself did not implicate the petitioner herein and in such circumstances when the superior office viz., the Inspector of Police was exonerated from the very same charges, it was highly improper for the respondents to hold that the charges were proved as against the petitioner alone and consequently award him punishment.

29. Therefore it is a clear case where there is no evidence based on which finding of fact has been arrived as held by the Hon'ble Supreme Court. This Court exercising power under Article 226 of the Constitution of India is therefore entitled to interfere.

30. The learned counsel for the respondents would also vehemently contend that the scope of departmental proceedings in respect of a superior officer are entirely different and when it comes to a subordinate officer, the criteria is totally different and no fault can be found with the exoneration of the Inspector and awarding punishment to the petitioner, this Court finds that



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the charges against both the Inspector, the Superior officer and the petitioner, the subordinate officer are one and the same and infact one of the rules said to have been violated is additionally put against the superior officer and not against the inferior officer. This being the position when the charges are one and the same, it cannot be said that the scope of enquiry against superior officer and subordinate officer stand on different footing.

31. Yet another factor that goes against the respondents is the manner in which the appellate authority has proceeded to decide the appeal. The appellate authority has not even discussed the charges or the appeal grounds raised by the petitioner and has also not independently assessed the materials available on record, before deciding the appeal. The appellate authority has merely endorsed the view of the disciplinary authority and confirmed the penalty of compulsory retirement from service with immediate effect.

32. The Hon'ble Supreme Court, as already seen above, has held the importance of the fair procedure to be adopted by the appellate authority



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against disciplinary proceedings. Here, there has been a clear violation of principles of fair play and admittedly the petitioner was not even given an opportunity to canvass his grounds as set out in the appeal, before the appellate authority. This is one another ground on which the petitioner is entitled to succeed.

For all the above reasons, the Writ Petition is allowed. No costs.

28.07.2023.

Internet:Yes

Index:Yes/No

Neutral Citation:Yes/No

kpr

To

1.The Principal Security Commissioner &
Disciplinary Authority
Railway Protection Force
Integral Coach Factory
Chennai-38

2.The Director-General
Railway Protection Force
Govt of India
Ministry of Railways
(Railway Board)
New Delhi

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P.B.BALAJI, J.,
kpr

Pre-delivery order in
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28.07.2023