

***HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**

+WRIT PETITION No.24577 OF 2022

% Dated 03.03.2023

Between:

J.Samson

...Petitioner

and

\$ The Commissioner of Police,
Rachakonda, Hyderabad and others

.... Respondents

! Counsel for the petitioner : Sri A.Thirupathi Goud
^ Counsel for the respondents : Sri M.V. Rama Rao
(Special Government Pleader)

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? Cases referred: :

1. W.P. No.38626 of 2015 (High Court of A.P.)
2. W.P. No.114543 of 2015 (High Court of Karnataka)
3. (2007) 10 SCC 385
4. (2011) 4 SCC 584
5. (2013) 1 SCC 598

THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**W.P. No.24577 of 2022****ORDER:**

This writ petition has been filed seeking a *writ of mandamus* to declare the impugned D.O. No.141/2021, Rc.No.77/PR-I/Major/RCK/2019, dated 25.01.2021 and its consequential Proceedings No.204/T1/2021, dated 26.07.2021 issued by the 2nd respondent communicated by the 1st respondent in D.O. No.1131/2021, Rc.No.77/PR-I/Appeal/Major/RCK/2019, dated 17.08.2021 as being illegal, arbitrary, unjust, contrary to law and violative of Articles 14, 16 and 21 of the Constitution of India and consequently to set aside the same and hold that the petitioner is entitled for promotion to the post of Reserve Inspector with effect from the date on which his batch-mates were promoted to the said post with all consequential and attendant benefits.

2. It is the case of the petitioner that he was appointed as Reserve Sub Inspector with effect from 16.06.2013 and he was declared as approved probationer from 15.06.2015. It is submitted that based on a complaint lodged by one Smt. K.Preethi on 24.05.2019 before the Malkajgiri Police, the petitioner was placed under suspension by the 1st respondent, Commissioner of Police, vide D.O. No.999 of 2019, Rc.No.171/S/PR-1/RCK/2019, dated 25.05.2019 on the ground that being a responsible Police Officer, he had exhibited grave and immoral misconduct and reprehensible conduct with a woman and tried to

outrage her modesty on the pretext of giving her coaching for the Police Constable, which is most unbecoming of a Government servant and thereby violated Conduct Rules, 1964. Simultaneously, a criminal case was also registered in Cr.No.357 of 2019 under Section 354-D IPC in Malkajgiri PS. Based on the said allegation, the 1st respondent, Commissioner of Police, Rachakonda, placed the petitioner under suspension vide D.O. No.999/2019 dated 25.05.2019 and appointed the Deputy Commissioner of Police as Enquiry Officer vide proceedings dated 23.12.2019.

3. While so, after conducting departmental enquiry, the Enquiry Officer vide letter dated 16.09.2020 submitted his report holding that the charge levelled against the petitioner was proved. Based on the said report, the 1st respondent issued impugned D.O.No.141 of 2021, Rc.No.77/PR-I/Major/RCK/2019, dated 25.01.2021 awarding the punishment of postponement of increments for three years with effect on his future increments and pension. His suspension period from 25.05.2019 to 30.07.2019 was treated as not on duty. Against the said order, the petitioner preferred an appeal before the 2nd respondent, Director General of Police, and the same was also rejected vide Proceedings No.204/T1/2021, dated 26.07.2021 against which, the petitioner stated to have filed revision before the Government on 19.08.2021 and no orders have been passed thereon. Questioning the impugned orders dated 25.01.2021 and the

consequential order dated 26.07.2021, petitioner filed the present writ petition.

4. On behalf of the respondents, while denying the averments of the petition, counter affidavit has been filed, *inter alia*, stating that based on a complaint lodged by one Smt. K.Preethi that while she was undergoing coaching, the petitioner started harassing her by way of sending messages and therefore, initially the petitioner was placed under suspension and subsequently his suspension was revoked on 25.07.2019. Further, after conducting departmental enquiry and on receipt of the report from the Enquiry Officer that the charges levelled against the petitioner were proved and therefore, imposed punishment of postponement of increments for three years with effect on his future increments and pension by treating his suspension period from 25.05.2019 to 30.07.2019 as not on duty vide D.O. No.141 of 2019 dated 25.01.2021. Against the said order, the petitioner preferred an appeal before the 2nd Respondent, Director General of Police, that was rejected by the 2nd respondent vide proceedings dated 26.07.2021. Assailing the said rejection order, the petitioner filed revision before the 3rd respondent, State of Telangana, and the 3rd respondent also rejected the revision vide Memo No.3652-P/Ser.II/A2/2021-2, dated 24.02.2022 and the same was communicated to the petitioner who had acknowledged it on 31.03.2022.

5. Further, it is submitted that Smt. K.Preethi, W/o. K.Mahesh lodged a complaint against the petitioner before the P.S. Malkajgiri, who registered a case in Crime No.357 of 2019 and the said criminal case was ended in acquittal as witnesses turned hostile. Since the acquittal in criminal case has no bearing on the punishment already imposed on the petitioner, the action initiated against the petitioner vide impugned and consequential proceedings are sustainable and this writ petition is liable to be dismissed.

6. The learned counsel for the petitioner submits that the impugned proceedings dated 25.01.2021 and the consequential proceedings dated 26.07.2021 are clearly illegal and contrary to the material on record. He submitted that the complainant made a complaint against the petitioner that during her coaching period she gave two cell phone numbers to the petitioner and the petitioner used to harass her by calling and sending messages and because of his harassment she left the coaching in the month of October, 2017 and thereafter, till 23.05.2019, the petitioner did not disturb her. But, on 23.05.2019 at 19:00 hours she received a Whatsapp message to her second cell phone number from the petitioner phone number that "where are you". On receipt of the above message, the complainant made a phone call to the petitioner and questioned him as to why did he send the message to her cell phone number, for which, the petitioner replied that by mistakenly forwarded the message to the complainant in place of his friend by name Preetham. On the said

complaint, the Police Malkajgiri registered a case in Crime No.357 of 2019 under Section 354-D IPC and filed a case in C.C. No.324 of 2020 before the learned Principal Junior Civil Judge-cum-XVII Additional Metropolitan Magistrate, Cyberabad at Malkajgiri.

7. He further submits that during the course of departmental enquiry, the complainant deposed that due to wrathful and misunderstanding by her and her husband, she filed a complaint against the petitioner. Contrary to the material evidence on record, the Enquiry Officer gave his report holding that the charge of “exhibited grave misconduct and immoral acts by trying to outrage the modesty of women by way of calling her on cell phone and thereby violated Rule-3 of sub rule (1 to 3) of the Telangana Civil Services (Conduct) Rules, 1964 is proved.” Based on the said enquiry report, the respondents have passed the impugned punishment proceedings.

8. He further submits that the evidence and the witnesses in the departmental proceedings and in the criminal case are the same. The very basis for the respondents to hold the departmental proceedings is the charge in the criminal case. Since the Trial Court found the petitioner not guilty in the said criminal case for the offence punishable under Section 354-D of IPC and the petitioner was acquitted, the orders of punishments dated 25.01.2021 and its consequential proceedings dated 26.07.2021 are not tenable and therefore, the same are liable to be set aside.

9. In support of his contentions, he placed reliance on the orders dated 23.03.2022 passed in W.P. No.38626 of 2015 by the High Court of Andhra Pradesh, order dated 14.07.2022 passed in W.P. No.5277 of 2013 by the High Court for the State of Telangana and the order dated 08.01.2021 passed in W.P. No.114543 of 2015 by the Karnataka High Court.

10. *Per contra*, the learned Special Government Pleader, while reiterating the counter submissions further submits that as the scope of enquiry before the criminal Court and the departmental proceedings is entirely different and distinct and therefore, the respondents have rightly passed the impugned proceedings. Further, the disciplinary authority have awarded the punishment to the petitioner in accordance to the Telangana Civil Services (Classification, Control and Appeal) Rules 1991, Rule 21 (5) which states that, *"If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (vi) to (x) of Rule 9 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to the imposed:"*. As per the said clauses only, the disciplinary authority have imposed the punishment of postponement of increments for three years with effect on his future increments and pension and his

suspension period from 25.05.2019 to 30.07.2019 was treated as not on duty. Further, having preferred an appeal by the petitioner before the appellate authority on the said order of punishment was also rejected by the appellate authority. Hence, interference of this Court may not be required in this writ petition and this writ petition is liable to be dismissed.

11. Heard the learned counsel Sri A.Tirupathi Goud appearing for the petitioner and the learned Special Government Pleader Sri M.V. Rama Rao appearing for the respondents and perused the material made available on the record.

12. Upon a perusal of the record, the articles of the charge issued by the 1st respondent, Commissioner of Police, Rachakonda, reads as under:

CHARGE:

Article-I: "Exhibited grave misconduct and immoral acts by trying to outrage the modesty of women by way of calling her on cell phone which is unbecoming of a member of disciplined police force and thereby tarnishing the image of police which is contravening to Conduct Rule-3 (1 to 3) of TCS (Conduct) Rules 1964".

Basis of the charge: On 24/05/2019 Smt Kukkala Preethin W/o K.Mahesh, 26 years old, Caste: Rajput R/o. Uppariguda, Malkajgiri lodged a complaint with Malkajgiri PS stating that, in the year 2017 she had applied for free coaching of Police Constable provided by Rachakonda Police Commissionerate at Amberpet Police Head Quarters, wherein the Coach was Sri Samson, RSI. In due course of training, the Coach RSI

Samson prioritized her over others and got acquainted. The woman trainee gave her two contact numbers i.e. 7993253259 and 8639215793 respectively to coach Samson for communication. The RSI, taking undue advantage started stalking her often telephonically asking are you free now, "would you be free during night time and so on and so forth". Consequent to his harassment the complainant had quit the coaching in midst of October-2017. Later on 23/05/2019 at 1900 hrs, she received a WhatsApp query message on her alternate contact number from the coach RSI Samson's Mobile number 8332981190 as to "Where are you"? When she call confronted him, he tried to escape the matter. Basing on the report No./OW/MK-1/RCKD/2019, dated: 25-05-2019 of the Inspector of Police Malkajgiri PS, Rachakonda he was placed under suspension vide D.O. No.999/2019, dated: 25-05-2019. Subsequently he was released from suspension vide D.O. No.1486/20-19, dt:25-7-2019.

Basing on her complaint, a case in crime No.357/2019 U/s 354D IPC was registered against the Sri J. Samson at Malkajgiri PS.

Thus, Sri J. Samson, RSI formerly CAR Hqrs Amberpet and now at CAR Hqrs Bhongir Rachakonda has exhibited grave misconduct and immoral acts by trying to outrage the modesty of women by way of calling her on cell phone which is unbecoming of a member of disciplined police force and thereby tarnishing the image of police which is contravening to Conduct Rule-3 (1 to 3) of TCS (Conduct) Rules 1964.

13. Against the said charge, the 1st respondent proposed to hold an enquiry against the petitioner duly adhering to the procedure laid down under Rule 20 of the Telangana Civil Services (Classification, Control and Appeal) Rules, 1991 and directed to submit his written statement of defence within ten days from the date of receipt of orders. Thereafter, the petitioner has given explanation to the 1st respondent on 29.10.2019, *inter alia*, stating that the complainant did not pass Intermediate and she was not eligible to undergo free coaching camp and asked her to leave the camp as Inter failed candidate is not eligible to appoint as Police Constable so she left the coaching camp in the October, 2017 as she did not pass Intermediate but not for his harassment as alleged in the Article of charge and also he never asked her in telephone whether she is free or when she would be free etc. After she left from coaching, he forgot her cell numbers. But, unfortunately on 23.05.2019 at 1900 hours, he forwarded a message to her cell number mistakenly in place of his friend but there was no *mala fide* intention to out rage her modesty. In her return telephonic call, he apologized her for forwarding message mistakenly and she was satisfied with his reply but why she has given complaint against him reasons were not known. Further, her husband took undue advantage and black mailed him and insisted his wife to make complaint against him and landed him in trouble for not helping him in his criminal cases, which are beyond the petitioner's limits. He further submitted that there is no evidence to say that he called her several occasions and he did not say anything with her in

recorded audio which is submitted to the P.E. Officer. The call data will prove his innocence and would further submit that without substantial evidence, it is not desirable to attribute the allegation of modesty of women which is attracted under Section 354 IPC. So there is no *prima facie* to hold an enquiry against him and requested to consider his case sympathetically and to drop further action in the matter.

14. Later on, on 04.03.2020 he requested to consider his earlier explanation dated 29.10.2019 as his final explanation.

15. In the departmental enquiry, statement of the complainant/victim was recorded wherein she while reiterating the charged allegations further said that she came to realise that due to wrathful and misunderstanding by her and her husband, she filed a complaint against the petitioner and she does not want to proceed any more in this case and requested to drop further action against the petitioner.

16. Further, statement of one Sri G.Sundeeep, the then ACP, Malkajgiri Division, Rachakonda, was recorded by Ms.Rakshitha K.Murthy, IPS., Dy.Commissioner of Police, Malkajgiri Zone, Rachakonda at DCP Office Malkajgiri Zone on 27.02.2020 and submitted a preliminary enquiry report to the 1st respondent vide letter dated 27.07.2019 wherein he stated that he conducted preliminary enquiry and secured the presence of victim and recorded the following statement, which reads as under:

“....During Preliminary Enquiry, basing on the oral evidence of victim supported by the audio recordings CD submitted by her disclosed that, in the year, 2017 the victim Smt. Kukkala Preethi applied for Women Police constable selection and similarly on coming to know through Police Malkajgiri that free coaching is being given by Rachakonda Police at Police Head Quarters, Amberpet she applied for the free coaching. During August, 2017 she received a phone call from Amberpet Hqtrs informing that free coaching will be given daily from 9 AM to 1200 hours, agreeing to which she joined the free coaching. Sri Samson, RSI was the in-charge for the physical events at the coaching who used to interfere in each and every issue of victim since beginning and started giving training to her with more interest. In the beginning, assuming him to be coach she used to talk freely with him and has given her mobile Nos.7993253259, 8639215793 for communication purpose, resulting the RSI Samson started calling her frequently questioning her as to what she is doing, is she free during night times? Etc., Unable to bear his harassment the victim stopped her training after attending for 6 months. Thereafter also, as the RSI Samson was frequently calling her on her mobile she removed her sim No.7993253259 and since then she did not receive any communication to her phone number from him.

On 23.05.2019 at about 7.00 PM she received a whatsapp message to her 2nd mobile as “Where are you” from the official No.8332981190 of RSI Samson. In turn she called him and questioned as to why he has sent the message to her phone for which RSI Samson replied her that mistakenly the message got sent to her instead of sending the message to his friend.”

17. As per the proceedings No.204/T1/2021, dated 26.07.2021, the 2nd respondent, Director General of Police, at para 7 of the appeal order held as under:

“I have gone through the appeal petition carefully and minutely. The appellant did send messages to the complainant as “where are you?” etc and also called her on her two numbers asking “Are you free now?”, “Are you free in the night time?” etc., which are highly objectionable. The audio disc, which was played in his presence during the OE, proves this. Hence, the appellant did indulge in misconduct. Hence, the appeal petition is rejected.”

18. The learned Principal Junior Civil Judge-cum-XVII Additional Metropolitan Magistrate, Cyberabad at Malkajgiri, while dealing with the case of the petitioner registered in C.C. No.324 of 2020 (Cr.No.357 of 2019), P.S. Malkajgiri, considered the point for determination that whether the prosecution has established the guilt of accused for the offence punishable under Section 354-D of IPC beyond all reasonable doubt?

19. The learned trial Judge held that to substantiate the case of the prosecution, it has examined P.W.1 and marked Ex.P1 in support of their case. In her chief examination, she deposed that she do not know the accused, she was never teased by the accused or anyone, she do not know the contents of the complaint and her signature has been obtained on blank white paper, police did not examine her and her statement was not recorded by the police, Ex.P1 is the signature on the complaint.

20. The learned APP has given up the evidence of LW2 to 10 as the material witness turned hostile by the APP and even during the cross examination of PW1 by the learned APP nothing was elicited in favour of the prosecution case. The learned Judge found that the evidence adduced by the prosecution could not prove that the accused has committed the offence under Section 354-D of IPC beyond all reasonable doubt. Accordingly, the accused was acquitted vide judgment dated 19.10.2020 in C.C. No.324 of 2020 (Cr.No.357 of 2019) P.S. Malkajgiri.

21. In support of the case of the petitioner, the learned counsel for the petitioner placed reliance on the order dated 23.03.2022 passed in W.P. No.38626 of 2015 by the High Court of Andhra Pradesh. The relevant para in the said order reads as under:

“10. In G.M.tank’s case (1 supra), the Hon’ble Apex Court, at paragraph Nos.15 and 16, held as follows:

"15. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected

in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

16. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision

in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

22. In the said case, it was noticed that the judicial pronouncement was made after a regular trial and on hot contest. But, in the present case, the complainant deposed her chief examination only but the Police did not examine her and her statement was not recorded. Further, the APP had given up evidence of LW2 to 10 as the material witness turned hostile and even during the cross examination of PW1 by the learned APP nothing was elicited in favour of the prosecution case. Hence, the finding of the learned Judge was that the evidence adduced by the prosecution could not prove that the accused has committed the offence under Section 354-D of IPC, beyond all reasonable doubt and accordingly, the accused was found not guilty for the said offence and he was acquitted. Hence, the said acquittal cannot be treated as honourable acquittal and the decision of the Hon'ble Supreme Court referred to above does not lend any support to the case of the petitioner and the same is clearly distinguishable of facts. The facts and circumstances of the present case to that of the referred case are different. The issue pertains to the present case is to the obligation of the petitioner towards the trainees, who are being trained by the petitioner.

23. The proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional area. In the departmental proceedings, a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent. While in departmental proceedings, the standard of proof is one of preponderance of probabilities whereas in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. Therefore, the acquittal in criminal case has no bearing on the punishment already imposed on the petitioner.

24. The learned counsel for the petitioner filed a copy of the order dated 08.01.2021 passed in W.P. No.114543 of 2015 by the High Court of Karnataka, Dharwad Bench, as material papers, wherein at 18 held as under:

“The Hon’ble Supreme Court in the case of Shashi Bhusan Prasad Vs. Inspector General, CISF reported in (2019) 7 SCC 797 in paragraph Nos.19, 20, 21 and 22 has held as under:

“19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose

penalty in accordance with the service rules. 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. Even 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 whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of “preponderance of probability”. Acquittal by the court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment (Shashi Bhusan Prasad V. CISF, 2008 SCC On Line Ori 544 : 2008 Lab IC 3733) in detail and needs no interference by this Court.”

25. Having gone through the said judgment, it is not supporting the case of the petitioner but had categorically held that it is fairly well settled that two proceedings criminal and departmental are entirely different and operate in different fields and have different objectives.

26. In the case of **Noida Entrepreneurs Association Vs. Noida And Others**¹ the Hon’ble Supreme Court held as under:

“A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference

¹ (2007) 10 Supreme Court Cases 385

between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. (See: Tata Cellular v. Union of India (1994(6) SCC 651), and Teri Oat Estates (P.) Ltd. V. U.T. Chandigary and Ors. (2004 (2) SCC 130). The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya vidyalaya Sangathan and Others v. T. Srinivas (2004(7) SCC 442), Hindustan Petroleum Corporation Ltd. And Others v. Sarvesh Berry (2005(10) SCC 471) and Uttaranchal Road Transport Corpn. v. Mansaram Nainwal (2006(6) SCC 366).

“8. ... The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature

involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. ...Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

A three-judge Bench of this Court in Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya and Ors. (1997 (2) SCC 699) analysed the legal position in great detail on the above lines.

27. In the said case, the Hon'ble Supreme Court had categorically held that the departmental enquiry is distinct from criminal proceeding and the standard of proof required in departmental enquiry is not the same as required to prove a criminal charge. Even acquittal in criminal case does not bar departmental enquiry.

28. Further, in the case of **State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya**² the Hon'ble Supreme Court at para 10 held as under:

“9. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him.”

29. In the case of **Deputy Inspector General of Police and another Vs. S. Samuthiram**³, the Hon'ble Supreme Court while considering a similar case that a police official was alleged to have misbehaved with a woman at a bus-stand and he was found guilty in

² (2011) 4 Supreme Court Cases 584

³ (2013) 1 Supreme Court Cases 598

the departmental enquiry but was acquitted in the criminal case. The issue before the Hon'ble Supreme Court was that whether the respondent therein was entitled to reinstatement as a result of his acquittal and while dealing with this issue, the Hon'ble Supreme Court collaterally considered the social evil of eve-teasing and held at paras 23 and 24 as under:

“23. We are of the view that the mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department. The respondent, it may be noted, is a member of a disciplined force and non examination of two key witnesses before the criminal court that is Adiyodi and Peter, in our view, was a serious flaw in the conduct of the criminal case by the Prosecution. Considering the facts and circumstances of the case, the possibility of winning order P.Ws. 1 and 2 in the criminal case cannot be ruled out. We fail to see, why the Prosecution had not examined Head Constables 1368 Adiyodi and 1079 Peter of Tenkasi Police Station. It was these two Head Constables who took the respondent from the scene of occurrence along with P.Ws.1 and 2, husband and wife, to the Tenkasi Police Station and it is in their presence that the complaint was registered. In fact, the criminal court has also opined that the signature of PW-1 (husband – complainant) is found in Ex.P1 – Complaint. Further, the Doctor P.W.8 has also clearly stated before the Enquiry Officer that the respondent was under the influence of liquor and that he had refused to undergo blood and urine tests. That being the factual situation, we are of the view that the respondent was not honourably acquitted by the criminal court, but only due to the fact that PW-1 and

PW-2 turned hostile and other prosecution witnesses were not examined.

Honourable Acquittal

24. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in *Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal* (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In *R.P. Kapoor vs. Union of India*, AIR 1964 SC 787, it was held even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In *State of Assam and another v. Raghava Rajgopalachari* reported in 1972 SLR 44 (SC), this Court quoted with approval the views expressed by Lord Williams, J. in *Robert Stuart Wauchope V. Emperor* ILR (1934) 61 Cal 168 which is as follows (Raghava case, SLR p.47, para 8):

“8. ... The expression “honourably acquitted” is one which is unknown to court of justice. Apparently it is a form of order used in courts martial 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 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 Government authorities term ‘honourably acquitted’” (Robert Stuart case, ILR pp. 188-89).

26. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the

crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

30. From the above judicial pronouncements, it is well settled law that the strict burden of proof required to establish guilt in a criminal Court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient.

31. That apart, the 2nd respondent, Director General of Police, in his proceedings dated 26.07.2021 had categorically held that after having gone through the appeal petition carefully and minutely held that the petitioner did indulge in misconduct. The above sequence of events of the petitioner appears to be gross misconduct towards his job and is not expected from an officer, who is a member of disciplined Police office holding high dignity and integrity and are contrary to the Rule 3 of the Telangana Civil Services (Conduct) Rules, 1964, which reads as under:

“Rule 3. General :- (1) Every Government employee shall be devoted to his duty and shall maintain absolute integrity, discipline impartiality and a sense of propriety.

(2) No Government employee shall behave in a manner which is unbecoming of such employee or derogatory to the prestige of Government.

(3) No Government employee shall act in a manner which will place his official position under any kind of embarrassment.”

32. The petitioner did not maintain absolute integrity towards his job and he got involved in a criminal case in Cr.No.357 of 2019 under Section 354-D IPC of Malkajgiri PS., which is derogatory to the image of Police department in the eyes of general public. Having gone through the record, it is clear that the petitioner was given an opportunity by the inquiring authority during departmental inquiry to prove his innocence by producing his friend Preetham. The petitioner failed to prove his innocence as he did not produce his friend Preetham nor did he produce any documentary evidence in support of his contention. The burden of proof lies on the petitioner to prove his innocence by way of adducing his independent evidence, which must stand alone in support of the petitioner's case but not on the failure of prosecution. Hence, it could be safely held that the petitioner created a concocted story using a person's name Preetham as his friend for convincing the victim.

33. Since the petitioner is a member of disciplined Police Force is not expected to maintain the personal phone numbers of the trainees, who enrolled for training, in his private mobile numbers. Ideally, the petitioner would have deleted the mobile number of the

complainant/victim when it is not required and when she already left from the coaching. In this regard, the explanation offered by the petitioner is not genuine and baseless. If the petitioner had acted in a disciplined manner and with dignity, the victim would not have left the coaching and had an opportunity of participating in the selection process in the Police department. That apart, the petitioner violated and acted against the Rule 3 of sub Rules 1 to 3 of the Telangana Civil Services (Conduct) Rules, 1964, and he failed to maintain absolute integrity, discipline impartiality and a sense of propriety and acted in derogatory to the prestige of Government/Police Department and embarrassment more so, the petitioner is serving in a disciplined Police Department wherein the standard of discipline is expected to be much higher than in any other ordinary service, as such, the impugned proceedings dated 25.01.2021 and its consequential proceedings dated 26.07.2021 are sustainable.

34. Having regard to the facts and circumstances of the case, submissions made by the learned counsel on either side and after going through the various judicial pronouncements, this Court is of the considered opinion that there is no reason to interfere with the impugned proceedings dated 25.01.2021 and its consequential proceedings dated 26.07.2021 and the petitioner is not eligible for the relief as sought for by him in the present writ petition. Therefore, this writ petition is liable to be dismissed.

35. In the result, this writ petition is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE N.V. SHRAVAN KUMAR

Date: 03.03.2023

Note: L.R. copy to be marked

B/o.

LSK