

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 14th OF MAY, 2024

WRIT PETITION No. 4112 of 2009

BETWEEN:-

**HARI BAKASH SINGH @ HARI S/O S/O LATE
B.R.SINGH, AGED ABOUT 62 YEARS,
OCCUPATION: DEPUTY COLLECTOR R/O
MORENA (MADHYA PRADESH)**

.....PETITIONER

(SHRI PRATIP VISORIYA, LEARNED COUNSEL),

AND

- STATE OF M.P., THROUGH PRINCIPAL**
- 1. SECRETARY, DEPARTMENT OF GENERAL
ADMN.DEPTT. BHOPAL (MADHYA PRADESH)
UNDER SECRETARY, DEPT. OF GENERAL**
 - 2. ADMIN., VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)
COMMISSIONER, GWALIOR DIVISION**
 - 3. MOTIMAHAL, GWALIOR OCCUPATION:
(MADHYA PRADESH)**

.....RESPONDENTS

(SHRI N.S.TOMAR, LEARNED GA),

*This petition coming on for HEARING this day, the court passed
the following:*

ORDER

- 1. The petitioner, who is a retired Dy. Collector, has assailed the
punishment order dated 09.07.2009 passed by Under Secretary of**

General Administration Department, by the name of Governor whereby, 10% of the amount of pension was ordered to be deducted from the pension amount payable to the petitioner.

2. Short facts of the case are that, the petitioner was posted as SDM Bhind. On 22.10.2000 one girl namely Priya was recovered from Smt. Kamla's brothel by Kotwali police on the basis of the search warrant issued by the SDM Bhind Distt. Bhind under Section 97 of the Cr.P.C and she was produced before the petitioner but at the time of her production, no criminal case was registered by Bhind Police and she was not referred for medico-legal check up. Smt. Kamla and Beena who were present at the time of police search were also not arrested and local police simply executed warrant and produced the girl before the SDM Bhind (petitioner). However, subsequently, on 7.1.2001, one criminal case was registered at Crime No.13 of 2001 against Devar Chand, (Jija of Priya), Smt. Kamla and Beena U/s 366, 344 and 34 of IPC at Kotwali police Station in respect to the letter written by Addl. Advocate General of M.P. High Court, Bench Gwalior.

3. Ku. Priya (girl who was recovered) filed W.P. No.2114 of 2000 before Division Bench of this Court and the same was decided vide order dated 11.09.2001 wherein, certain observations were made regarding negligent act of the petitioner in recording statement of Priya in slip short

manner and passing casual order for her being kept in Short Stay Home. It is further observed in the order that when the petitioner passed the order on 21.10.2000 issuing search warrant, it was specifically mentioned that there are reasons to believe that the girl is wrongly confined by Beena in the house of Kamla for carrying out flesh trade and her life was in danger. Despite that, her statement was not recorded in detail and SDM Bhind (petitioner) has not cared to ask even a single question to her asking whether, she was exploited sexually.

4. On the basis of the above observations, High Court issued directions to initiate departmental action against SDM for his inaction. In compliance of the order passed by the High Court on 11.09.2001, the charge sheet on 29.04.2002 was issued to the petitioner reproducing observations of the High Court. The petitioner submitted his reply and denied the allegations. He also explained the circumstances of the case and involvement of the lawyer. However, inquiry officer without recording evidence of the witnesses found that the charges were proved partly and forwarded his report to the Disciplinary Authority, who was Commissioner, Chambal Division Morena. Representation was submitted by the petitioner on 21.09.2007 to the Disciplinary Authority in respect of the inquiry report. However, during this period on 31.01.2008, the petitioner retired and thereafter, the matter was forwarded to the General

Administration Department for the purpose of consideration of inquiry report and passing punishment order. General Administration Department after seeking opinion from PSC put up the matter before the Council of Ministers (Cabinet) and as per decision of the Council of Ministers, the impugned order dated 09.07.2009 was passed in the name of Governor whereby, 10% amount of pension was deducted permanently under Rule 9 of M.P. Civil Service (Pension) Rules, 1976 (in short `The Pension Rules).

5. The petitioner has assailed the order dated 09.07.2009 mainly on the following grounds :

(i). The High Court simply directed to take disciplinary action against the petitioner, meaning thereby, direction was issued to initiate departmental inquiry wherein, the charges were required to be proved during inquiry independently but the inquiry report was submitted only on the basis of the finding of the High Court;

(ii). During course of inquiry, no witness was examined from the side of employer and therefore, the inquiry report is based on no evidence;

(iii). There is no allegation of causing any pecuniary loss and therefore, no order could be passed under Rule 9 of the Pension Rules;

(iv). At the most, the act of petitioner could be taken as negligent and the same does not constitute any misconduct;

6. On the aforesaid grounds, present petition is filed and the order of

deduction of 10% of the amount of pension, has been assailed.

7. Learned counsel for the petitioner submits that the petitioner has exercised powers conferred U/s 97 of the Cr.P.C and issued search warrant. The girl was recovered on the search warrant and produced before the SDM, Bhind. However, Mr. Bhadoria Advocate orally asked to hand over the girl to him and looking to the future of Ku. Priya, the petitioner directed to send her to Nari Niketan. The girl was major and was not complaining anything about her harassment. She was not willing to go for medical check up and looking to her future life, medical check up was not ordered. The habeas corpus was filed before Division Bench being aggrieved by the order of the petitioner by Shri Anil Kumar Singh Bhadoria Advocate on behalf of Priya alleging that she was remanded to Short Stay Home by SDM against her will. However, when she was produced before the court, she informed that she is comfortable at Short Stay Home and they are looking after her well.

8. Learned counsel further argued that the proceedings were initiated upon the directions issued by the High Court but neither Ku. Priya nor Shri Bhadoria or any other witness was examined and simply, the finding was recorded by the inquiry officer on the basis of the observations of the High Court that the charges have been partly proved. For the purpose of proving charges, copy of order passed by the High Court and the letters of

Collector and SDO were considered and the inquiry was concluded. No other evidence and documents were produced on behalf of the department whereas, two witnesses were examined by the petitioner. He further submits that the order was passed by under Secretary, GDA on the basis of the decision taken by the Cabinet under the seal of Hon'ble Governor of M.P, but the Governor has not passed any order, therefore, the order is bad in law. He further submits that PSC recommended for deduction of 5% amount of his pension. However, the Cabinet had decided for deduction of 10%. No pecuniary loss was caused to the government therefore, no order could be passed under Rule 9 of Pension Rules. He relied on the judgment passed by the coordinate Bench in the matter of **Suresh Chand Upadhyay Vs. Union of India and Others, reported in (2012) 10 MPHT 218**, wherein, the coordinate Bench has held that filing of copy of FIR and other documents are not sufficient to prove the charges in a departmental inquiry. The charges are required to be proved independently. The relevant paras read as under :

“13. These points are inter-related. Admittedly, the complainants were not produced in the departmental enquiry. There was no eyewitness to the incident of extracting money/taking bribe. The enquiry officer has given following finding:-

“That there was no eyewitness or any direct evidence or evidence except the statements of PW6, PW7 and PW8, from the evidence in for going paragraphs, it is well established that the delinquent Constable failed to perform his duties properly and he illegally extracted money from the two passengers under threat”.

In view of this finding, there is no manner of doubt that neither the complainants/two passengers nor any other eyewitness entered the witness box in the domestic enquiry.

14. The Apex Court in (2006) 12 SCC 321 (Ritesh Chakarvarti vs. State of M.P.) held that non-examination of material witnesses vitiates the enquiry. The Apex Court in the case of Union of India and others vs. Gyan Chand Chattar [(2009) 12 SCC 78] held that when a serious charge like bribery is made, it should be specific, definite and detailed. It cannot be based on hearsay statement. It is further held as under:-

“In a case of corruption, the only punishment is dismissal from service. Therefore, the charge of corruption must always be dealt with keeping in mind that it has both civil and criminal consequences. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer the severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities”.

(Emphasis added)

15. In the present case also the charge is of extracting money from two passengers. The punishment inflicted is also removal from service. In such a case applying the principle laid down in Gyan Chand Chattar's case (supra) it is required to be seen whether the charge is proved to the hilt. This is also settled in law that even in domestic enquiries suspicion cannot take the place of proof however strong it may be. In catena of judgments the Supreme Court has consistently taken this view that suspicion cannot take the place of proof in departmental enquiries. In [Union of India \(UOI\) Vs. H.C. Goel](#), followed by this Court in [Union of India \(UOI\) and Others Vs. V.K. Giridonia and Another](#), it is held that mere suspicion is not sufficient to crucify a delinquent employee. In [Roop Singh Negi Vs. Punjab National Bank and Others](#), the Apex Court took the same view.

16. In the light of aforesaid legal position, the question is whether the petitioner can be said to be guilty and charges can be said to be proved against him. Admitted position between the parties is that material witnesses and complainants did not enter the witness box. The charge is said to be proved by producing certain other R.P.F. Staff as prosecution witnesses. A bare perusal of the enquiry report shows that none of the prosecution witnesses had seen the alleged transaction/ extraction of money by the petitioner nor they were present at the time of incident. The charge is said to be proved on the basis of written complaints and the statements of prosecution witnesses who deposed that the said money was subsequently

refunded by the petitioner later on in GRP Thana to the complainants. Thus, on the basis of this deposition that since money was refunded, a presumption is drawn that it must have been taken. Whether this proves the allegation against the petitioner to the hilt, is a million-dollar question. The Apex Court in a recent judgment reported in [Commissioner of Police, Delhi and Others Vs. Jai Bhagwan](#) held as under:-

“Although there is some evidence that an amount of Rs.100 was returned by the respondent to the complainant but there is no such direct and reliable evidence produced by the appellants in the departmental proceedings which could clearly prove and establish that the respondent demanded and received an illegal gratification of the said denomination It seems that the proof of taking such illegal gratification has been drawn from the evidence of returning of Rs.100 to the complainant by way of a link-up. Non-examination of the complainant and another during the departmental proceeding has denied the respondent of his right of cross-examination and thus caused violation of Rule 16(iii) of the Delhi Police (F&A) Rules, 1980. In the absence of such a definite/clear proof supporting the case of the appellants it is difficult to draw a finding of taking illegal gratification by the respondent from the complainant. Therefore, as rightly held by the High Court the present case is a case of no evidence. Albeit there could be a needle of suspicion pointed towards the respondent. However, suspicion cannot take the place of proof”.

17. There is a unique similarity to a great extent between the case in hand and that of *Jai Bhagwan* (supra). In *Jai Bhagwan*'s case also there was no proof of taking bribe nor complainants were examined in the departmental proceedings. In absence thereof, on the basis of returning of that amount to the complainants it was held to be sufficient proof against the delinquent employee. Same is the case here. The Apex Court in the said case held that it is a case of no evidence. However, by analyzing the entire factual backdrop, the Apex Court held that needle of suspicion is against the delinquent employee. Since suspicion cannot take the place of the proof, the finding and punishment was although set aside, no back wages were granted to the employee.

18. Following the ratio of this judgment, this Court is of the considered opinion that in the present case also the findings of enquiry officer are perverse and the charges are not established. It is a case of no evidence. However, in the present case also needle of suspicion points towards the petitioner. Accordingly, the petitioner is not entitled for any back wages”.

9. He further relied on the judgment of Apex Court in the matter of **Ritesh Chakarvarti Vs. State Of Madhya Pradesh, reported in (2006) 12**

SCC 321, wherein, it is held that non-examination of material witnesses vitiates inquiry. It is settled position of law that even in the domestic inquiry, the suspicion, however grave it may be, cannot take the place of legal proof. In catena of judgments, the Supreme Court has constantly taken this view that the suspicion cannot take place of proof in the departmental inquiry. He submits that in the present matter, no witness was produced on behalf of the department, therefore, the charges were not proved against the petitioner.

10. He further relied on the decision of Apex Court delivered in the matter of **Inspector Prem Chand Vs. Govt. of NCT of Delhi and others reported in (2007) 4 SCC 566**, wherein, it is held that negligent act of an employee cannot be considered as misconduct. It is further held in the case that if disciplinary authority has not recording any statement in respect of the charges, the same cannot be treated to be proved only on the basis of material collected in other proceedings.

11. He further relied on the decision of Apex Court delivered in the matter of **Roop Singh Negi Vs. Punjab National Bank and Others reported in (2009) 2 SCC 570**, wherein, the Apex Court has held that in the absence of evidence in the departmental inquiry, the charges cannot be treated to be proved. A departmental proceeding is a *quasi* judicial proceeding. The Inquiry Officer performs a *quasi* judicial function. The charges leveled against the delinquent officer must be found to have been

proved. The inquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties and the statements of the witnesses.

12. On the strength of the above pronouncements, he prayed for quashment of the punishment order passed in the name of Governor.

13. Per contra, learned counsel appearing on behalf of the respondents/State supported the order and submits that the conduct of the petitioner was considered by the Division Bench in habeas corpus petition. After considering the conduct of the petitioner, it was observed that the petitioner had committed mistake in not recording statement of girl and let the other ladies scot-free without registering any offence against them as well as not sending the girl for medico-legal examination. This act is serious in nature and the petitioner has failed to perform the duties assigned to him. Therefore, a direction was issued to take action against the petitioner by the department after affording full opportunity to the petitioner. The inquiry report was prepared and the punishment order was passed in accordance with rules. He further submits that there is no scope of interference in the punishment order.

14. Considering the arguments advanced by the counsel for the parties and after perusal of the documents available on record, it appears that the Division Bench looking to the conduct of the petitioner, made observations

against the petitioner. However, the Division Bench had directed to take the departmental action against the petitioner meaning thereby, the Division Bench ordered to initiate departmental proceedings against the petitioner and the departmental proceedings ought to have been conducted in accordance with the rules. It is trite law that in a departmental proceedings, every charge is required to be proved by the presenting officer by adducing cogent evidence. Charges against the petitioner were that he failed to record statement of the girl who was exploited sexually, not sent her for medico-legal examination, he simply sent her to Short Stay Home, accused ladies were not handed over to the police and no FIR was registered. For the purpose of proving these charges, statement of Ku. Priya was most relevant and she could be the best witness in the matter of departmental inquiry but she was not examined. Even Mr. Bhadoria Advocate, was not examined during inquiry and therefore, without examining any witness, it is not understandable that how the charges were proved, because after recording observations against the petitioner, it was directed to take departmental action and during departmental proceedings, the charges were required to be proved independently but the same were not proved independently and the inquiry report was prepared only on the basis of the observations of the High Court.

15. If any inquiry report is prepared only on the basis of observations of

the High Court made in the order wherein, direction was issued to take departmental action against the delinquent, the charges were not proved independently, in the absence of the same, the inquiry report vitiates and same is not based on the cogent evidence.

16. It appears that the act of petitioner at the most could be considered as negligent act but for the purpose of proving negligent conduct of the petitioner as misconduct, it was required for the department to bring on record some cogent evidence, as it is trite law that every negligent act cannot be considered as misconduct. For the purpose of punishing an employee, misconduct is required to be proved which has not been done in the present case. Therefore, the order passed on the basis of inquiry report, dated 09.07.2009 (Annexure P/1) is liable to be quashed.

17. Consequently, present petition is allowed. The order dated 09.07.2009 is hereby quashed. The deduction of 10% of the amount from the pension of the petitioner is set-aside. The petitioner is entitled for the arrears of the pension with interest at the rate of 6% per annum. The difference amount be paid to the petitioner within a period of three months from the date of this order. Fresh PPO be prepared. No order as to costs.

(VINAY SARAF)
JUDGE