

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

BEFORE

JUSTICE SUJOY PAUL

ON THE 5th OF OCTOBER, 2023

WRIT PETITION No. 80 of 2019

BETWEEN :-

**SHRAVAN KUMAR BALONE S/O SHRI DEVAJI
BALONE, AGED ABOUT 54 YEARS, OCCUPATION:
RETIRED R/O 84 KISHOR NAGAR, KHANDWA
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI K.S. WADHWA – ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY HOME
DEPARTMENT VALLBH BHAWAN BHOPAL
(MADHYA PRADESH)**
- 2. DIRECTOR GENERAL OF POLICE POLICE
HEADQUARTERS JAHANGIRABAD
BHOPAL (MADHYA PRADESH)**
- 3. ADDITIONAL DIRECTOR GENERAL OF
POLICE POLICE HEADQUARTERS ZONE
INDORE (MADHYA PRADESH)**
- 4. DEPUTY INSEPCTOR GENERAL OF POLICE
POLICE HEADQUARTERS NIMAD RANGE
KHARGON (MADHYA PRADESH)**

5. SUPERINTENDANT OF POLICE POLICE
HEADQUARTERS DISTT. BURHNAPUR M.P.
(MADHYA PRADESH)

.....RESPONDENTS

(*BY SHRI V.P. TIWARI – GOVERNMENT ADVOCATE FOR THE STATE*)

This petition coming on for orders this day, JUSTICE SUJOY PAUL passed the following :

ORDER

Heard.

2. This petition filed under Article 226 of the Constitution of India takes exception to the order of punishment of compulsorily retirement dated 22/26.05.2018 (Annexure-P/6) which was affirmed by appellate authority vide order dated 09.10.2018 (Annexure-P/8).

3. In short, the relevant facts are that the petitioner while working as Sub Inspector received the charge sheet dated 28.06.2017 wherein it was alleged that on 06.04.2017, the petitioner was on duty and was found to be under the influence of liquor in a liquor shop. 06.04.2017 was the day of 'Ramnavmi' and aforesaid conduct of petitioner has tarnished the image of the department. The petitioner has allegedly committed misconduct as per Rule 23(d) of **M.P. Civil Services (Conduct) Rules, 1965** (Conduct Rules) and Regulations 64(2) and (3) of **M.P. Police Regulations** (Regulations). The second charge against the petitioner was relating to the past record. It is alleged that

petitioner has received 69 minor and 2 major punishments but did not improve his conduct.

4. The petitioner filed his reply on 24.01.2018, denied the charges and stated that on 06.04.2017 he was not on duty. The Disciplinary Authority was not satisfied with the reply of the petitioner and decided to conduct the enquiry. Resultantly, an Enquiry Officer was appointed. The Enquiry Officer recorded the statement of 18 prosecution witnesses and prepared his report which was served on the petitioner alongwith a show cause notice dated 02.02.2018 (Annexure-P/4) issued by Disciplinary Authority i.e. Superintendent of Police, District-Burhanpur.

5. In turn, petitioner filed his reply to the I.O's report. The Disciplinary Authority did not agree with the defence of the petitioner and imposed the punishment of compulsorily retirement vide order dated 22/26.05.2018. The petitioner unsuccessfully preferred an appeal which came to be dismissed on 09.10.2018 (Annexure P/8).

6. Criticizing the disciplinary proceedings and punishment, Shri K.S. Wadhwa, learned counsel for the petitioner submits that petitioner filed his reply to the charge-sheet (Annexure P/3) and made it clear that he was not on duty. Interestingly, the enquiry officer in his report gave finding that petitioner was not on the law and order duty on 06.04.2017 (Ramnavmi). Since, petitioner was not on duty, Rule 23(d) of the Conduct Rules has no application.

7. By taking this Court to the statement of Dr. Devendra Puniwala (P.W.8), it is urged that in his cross-examination Dr. Devendra Puniwala (P.W.8) admitted that he has not conducted any test by using the breath analyzer nor taken any blood sample of petitioner. In absence thereof, it cannot be said with certainty that petitioner was under the influence of liquor. The petitioner has bulky body and was taking certain medicines which contained some amount of alcohol. Dr. Puniwala (P.W.8) admitted that if such medicines are consumed, the smell of alcohol may come from the mouth of the person consumed it.

8. Apart from this, Shri Wadhwa has taken pains by placing reliance on the statements of Pramila Bai (P.W.9), Lata Bai (P.W.10), Kavita Bai (P.W.11), Sabeena (P.W.12), Minakshi (P.W.13), Mehrunisa (P.W.14), Fauzia (P.W.15), Smt. Sarita (P.W.16), Nirmala (P.W.17) and Banobi (P.W.18) and urged that these witnesses did not identify the petitioner and not stated anything about the overt act of the petitioner. All the aforesaid prosecution witnesses, in one voice stated that the liquor shop was closed. In this backdrop, the finding of enquiry officer is erroneous and perverse and petitioner could not have been held guilty for committing the misconduct.

9. The disciplinary authority has only taken into account the examination-in-chief part of above prosecution witnesses and has not taken pains to consider the cross-examination part of their depositions. The disciplinary authority further erred in taking into account the previous punishments but ignored the previous rewards. The

punishment imposed is totally unwarranted and uncalled for. Moreso, when the petitioner was not on duty.

10. Shri Ved Prakash Tiwari, learned Govt. Advocate supported the impugned order and urged that enquiry officer made it clear that the incident had taken place after the midnight of 05.04.2017. He clarified that on that day when the incident had taken place, the petitioner was on duty. Whether or not petitioner was on duty makes no difference in the light of findings given in last but one paragraph by the enquiry officer wherein he opined that if a Government employee is found to be under the influence of liquor in the public place, the Conduct Rule is attracted. There is no flaw in the decision making process and the decision which warrants interference by this Court.

11. The parties confined their arguments to the extent indicated above.

12. I have heard the learned counsel for the parties at length and perused the record.

13. Before dealing with the rival contentions, it is apposite to consider the relevant Rules/Regulations, which read thus -

23. Consumption of intoxicating drinks and drugs – A Govt. servant shall :-

(a)

(b)

(c) not appear in a public place in a state of intoxication; and

(d) not habitually use any intoxicating drink or drug in excess.

Regulation 64 (3) of Police Regulations reads thus -

“He shall conform himself implicitly to all rules which shall, from time to time, be made for the regulation and good order of the service, and shall cultivate a proper regard for its honour and respectability.”

14. This is trite that scope of judicial review in a case of disciplinary proceedings is limited. This court is basically concerned with the decision making process [See: **Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759**]. If principles of natural justice are violated while conducting the departmental enquiry which has caused prejudice and enquiry officer has based its reasons on some evidence, this court cannot re-appreciate the evidence to take a different view. In other words, in the departmental enquiry, the charges are required to be proved by applying principle of preponderance of probability and not that charges must be proved beyond reasonable doubt. If there is some evidence which connects the delinquent employee with the charges, the same are sufficient to hold the employee as guilty. The Apex Court has taken this view in **State of Haryana Vs. Rattan Singh (1977) 2 SCC 491; M Paul Anthony V. Bharat Gold Mines Ltd, (1999) 3 SCC 679; Ajit Kumar Nag Vs. Indian Oil Corpn. Ltd, (2005) 7 SCC 764; Suresh Pathrella Vs. Oriental Bank of Commerce, (2006) 10 SCC 572; State of Rajasthan Vs. Heem Singh, (2021) 12**

SCC 569 and State of Rajasthan Vs. Phool Singh, (2022 SCC OnLine SC 1140).

15. It is not the case of the petitioner that in the departmental enquiry full reasonable and adequate opportunity of defence was not provided to him. The petitioner was served with the charge-sheet and his reply was obtained. In the enquiry, he was permitted to cross-examine the prosecution witnesses. After receiving the inquiry report, petitioner's reply was procured and disciplinary authority considered it and passed a detailed order of punishment. The appeal of the petitioner was also considered and decided by a reasoned order. Shri K.S. Wadhwa, learned counsel for the petitioner has not pointed out any flaw in the decision making process in the departmental enquiry.

16. The bone of contention of learned counsel for the petitioner was that even if petitioner was sitting in a bar in drunken condition, since he was not on duty, he cannot be punished for committing misconduct. This argument on the first blush appears to be attractive but lost much of its shine when examined on the anvil of aforesaid provisions of the Conduct Rules. The petitioner's conduct (if proved) certainly constitutes a misconduct, even if, it was committed after the duty hours. A Division Bench of this Court in **2013 SCC OnLine MP 1058 (Union of India and ors. Vs. Sukhbir Singh Bais)** considered various Supreme Court judgments on this point and poignantly held as under :-

“14. Thus, even if it has taken place after the duty hours, it does constitute a misconduct. In (1971) 2 SCC 352, *Union of India v. Ram Kishan*, the Apex Court dealt with a case where the police

personnel was not in uniform and committed an offence. It was opined that the employee was purporting to act as a police personnel even when he was in plain clothes. Thus, punishment was not interfered with. In (1997) 2 SCC 708, *Government of Tamil Nadu v. S. Vel Raj*, the Apex Court dealt with the stand of a police personnel where he stated that he was found in a drunken condition but he was in “*mufti*”. It was also the stand of the delinquent employee that he had consumed “arrack”. The Apex Court held that in a disciplinary force one has to behave in a disciplined manner and, therefore, the said stand was not accepted and punishment of dismissal was upheld. The same punishment was affirmed by the Supreme Court in (2004) 13 SCC 117, *State of U.P. v. Harendra Kumar*, wherein the allegations were regarding consumption of liquor on duty. In 2011 (4) MPLJ (S.C.) 585 : (2011) 9 SCC 94, *Samar Bahadur Singh v. State of U.P.*, the Apex Court affirmed the punishment in case of consumption of liquor by a police constable, A Division Bench of this Court in Writ Appeal No. 618/2012 *Ashok Kumar v. State of M.P.*, has taken the same view on 3-12-2012. Considering the aforesaid, it cannot be said that the punishment is harsh or excessive in nature.

(Emphasis supplied)

17. Thus, I am not able to persuade myself with the line of argument that since petitioner was not on duty, his conduct does not fall within the ambit of misconduct. So far perversity of finding is concerned, much emphasis is laid on statements of PW-9 to PW-18. These witnesses deposed that the liquor shop was closed. Pertinently, various employees/officers of department entered the witness box. ASI Jameel

Patel, (PW-3), ASI Man Singh Chandel, (PW-4), Head Constable Narendra Shrivastava (PW-5), Head Constable Chandra Kant Mahajan (PW-6), and Constable Amit Yadav (PW-7) categorically deposed that when they reached the place of incident, the petitioner was found sitting there in a drunken condition. With the help of a few people, the petitioner was taken to Dr. Pooniwala who medically examined him. Dr. Pooniwala also deposed that the petitioner was under the influence of liquor and was not even able to walk properly. A plain reading of the statements of departmental prosecution witnesses makes it clear that they have deposed against the petitioner in a very categorical manner. There was no enmity between the petitioner and employees / officers of his own department and therefore, their statements cannot be discarded. In view of the statements of departmental witnesses, it cannot be said that it is a case of no evidence. Thus, the principle of preponderance of probability is satisfied.

18. Furthermore, the misconduct/incident had taken place in the intervening night of 05.04.2017 and 06.04.2017. The enquiry officer has given a plausible reason for holding that the petitioner was indeed on duty at the time of the incident and because of the intervening night, the confusion of date occurred. Even otherwise, the petitioner's misconduct is covered under Rule 23(c) of the Conduct Rules. In the manner Rule 23(c) of the Conduct Rules is framed, there is no manner of doubt that it covers the conduct of a police personnel even beyond his duty hours. The nature of allegations, factual backdrop and evidence led against

the petitioner shows that he was fully aware about the nature of allegations against him and got full opportunity to defend himself.

19. So far the defence that petitioner's blood sample was not taken and breath analyzer was not used, coupled with the submission that petitioner was taking some medicine containing alcohol, suffice it to say these contentions are devoid of substance because similar defence was taken in the case of **Government of T.N. Vs. S. Vel Raj (1997) 2 SCC 708** wherein delinquent employee took a defence that he had consumed 'arrack', the Apex Court was not impressed with the said defence. Similarly, in the case reported in **(1971) 2 SCC 325 (Union of India V. Ram Kishan)** the police personnel was not in uniform, still no interference was made in the punishment order. Similar view was taken by the Supreme Court in the case of Police Constable in **(2011) 9 SCC 94 (Samar Bahadur Singh V. State of U.P.)**.

20. By reading the deposition of Dr. Pooniwala it is clear that petitioner was under the influence of liquor and was not able to walk properly. If breath analyzer was not used or blood sample was not taken, it will not cause any dent to the story of the prosecution for the simple reason that the said Doctor had no enmity with the petitioner and his statement will not vanish in thin air merely because the aforesaid tests were not conducted. His statement fulfills the requirement of principle of preponderance of probability.

21. Looking from any angle, it cannot be said that findings of enquiry officer are based on no evidence or perverse in nature. The punishment imposed cannot be said to be extremely disproportionate

in nature which pricks the conscience of the Court. The police force is a disciplined force. Even when police officer is not on duty, in the teeth of Conduct Rules, he is expected to maintain discipline. For this purpose, Rules 23(c) and 23(d) were inserted in the statute book (Conduct Rules).

22. In view of forgoing discussion, no fault can be found in the decision making process and on the decision / punishment. The petition *sans* substance is hereby **dismissed**.

(SUJOY PAUL)
JUDGE