

Court No.37**Case :-** WRIT - A No. - 6432 of 2019**Petitioner :-** Sangram Yadav**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** Ishan Deo Giri**Counsel for Respondent :-** C.S.C.**Hon'ble Siddhartha Varma, J.**

For an incident which occurred on 21/22.7.2014, information was given by the Station House Officer, Nevdhia, District Jaunpur to the Superintendent of Police, Jaunpur that he had got a report through his mobile phone on 23.7.2014 that the petitioner under influence of alcohol has misbehaved with the private cook Shamshad Ahmad. The petitioner thereafter was suspended on 23.7.2014. A preliminary enquiry was undergone by a retired police officer by the name of Sagir Ahmad who submitted his report on 28.10.2014 finding a prima facie case against the petitioner. On the basis of the preliminary report, the enquiry was allotted on 20.6.2017 to Sri Sanjay Rai, Additional Superintendent of Police, Rural, Jaunpur by the Superintendent of Police, Jaunpur. A charge sheet was prepared on 28.7.2017 and was handed over to the petitioner on 1.8.2017. For the conducting of the enquiry dates were fixed on 1.8.2017, 16.8.2017, 3.9.2017, 5.10.2017, 13.10.2017, 27.11.2017, 4.12.2017, 20.12.2017, 21/23.12.2017, 6.1.2018, 17.1.2018, 18.2.2018 and 18/20.3.2018. Thereafter enquiry report was submitted on 24.4.2018 by the Enquiry Officer finding the petitioner guilty of the charges levied

against him and a major punishment of removal was proposed under Rule 4(1) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. On 30.4.2018, a show-cause notice was issued to the petitioner for his reply. Upon receiving the show-cause notice, the petitioner submitted his reply on 7.7.2018. Thereafter the punishment order was passed against the petitioner and he was removed from service vide order dated 27.8.2018. The appeal filed by the petitioner was dismissed on 17.10.2018 and similarly the revision filed by him was also dismissed on 25.1.2019. Aggrieved thereof, the petitioner had filed the instant writ petition.

Contention of learned counsel for the petitioner is that the enquiry was a sham enquiry inasmuch as the enquiry was being undergone in Jaunpur and the petitioner was posted at Varanasi from where he was unable to get leave to attend the enquiry. What is more, it has been stated that no eye-witness of the incident had been examined by the Enquiry Officer. The only persons who were examined as witnesses by the Enquiry Officer were Vishwajeet Pratap Singh, the Station House Officer who had by his mobile phone informed the Superintendent of Police on 23.7.2014 about the incident which had taken place on 21/22.7.2014 and the private cook Shamshad Ahmad. It has been contended by learned counsel for the petitioner that no other witness was examined. Still further, it is the contention of the learned counsel for the petitioner that only a medical report which

was based on smell coming from the petitioner of alcohol was relied upon. The blood test and the urine test of the petitioner were not undertaken and, therefore, it cannot with any certainty be said that the petitioner was guilty of having consumed alcohol. Still further, it is the contention of learned counsel for the petitioner that if the incident of slapping etc. had taken place when the petitioner was inebriated then a First Information Report ought to have been lodged which in fact was never lodged. Learned counsel for the petitioner submitted that the paragraph 31 of the writ petition, which had categorically stated that no medical officer was examined and also the sample of blood or urine was not used to prove the allegations, was not replied to in the counter affidavit. Learned counsel for the petitioner submits that as per the judgments reported in **(1971) 3 SCC 930 : Bachubhai Hassanalli Karyani vs. State of Maharashtra; AIR 1956 SC 460 : Gurcharan Singh & Anr. vs. State of Punjab and AIR 2010 SC 1812 : R. Venkatakrishnan vs. Central Bureau of Investigation**, the law is certain that the prosecution must stand on its own legs basing its findings on the evidence that has been led by it. It matters little as to whether the accused has made out a plausible defence or not. Learned counsel for the petitioner relying upon a decision of the Constitution Bench of Supreme Court in **Union of India vs. H.C. Goel** reported in **AIR 1964 SC 364** submitted that suspicion cannot be allowed to take the place of proof even in domestic

enquiries. Since, learned counsel for the petitioner cited a certain paragraph of the judgment reported in **AIR 1964 SC 364**, the same is being reproduced here as under :

".....mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as must to regular criminal trials as to disciplinary enquiries held under the statutory rules."

Learned counsel for the petitioner, therefore, submitted that the charge was not proved to the hilt and, therefore, it cannot be presumed that the petitioner was guilty of the charges.

Learned Standing Counsel, however, in reply submitted that if the petitioner chooses not to appear and to reply to the charge sheet, then the Police Department had no other option but to presume that the charges were proved.

Having heard Sri Pawan Giri, Advocate holding brief of learned counsel for the petitioner and the learned Standing Counsel and after having gone through the written arguments, I am of the view that the impugned order dated 27.8.2018 passed by the Superintendent of Police, Jaunpur, the order dated 17.10.2018 passed by the Inspector General of Police, Varanasi Zone, Varanasi and the order dated 25.1.2019 passed by the Additional Director General of Police, Varanasi Zone, Varanasi cannot be sustained in the eyes of law. Even if the petitioner had

not replied to the charges and had not appeared on the dates fixed when the enquiry was undergone, it was the bounden duty of the Enquiry Officer to have seen whether the charges were proved on the basis of the evidence which was led by it. The cook was a person affected. The police officer namely Vishwajeet Pratap Singh was only a person who had informed the Superintendent of Police, Jaunpur on 23.7.2014 about the incident of slapping etc. which took place on 21/22 July 2014. He was not an eye-witness. Further no individual who had seen the incident was summoned as an eye-witness to prove the incident. Also, there was only a medical report that there was a suspicion on account of the fact that there was a smell coming of alcohol from the petitioner while there was no blood report or urine report of the petitioner which actually would have proved that the petitioner had actually consumed liquor/alcohol to an extent that he was in a state of drunkenness.

For the reasons stated above, the order dated 27.8.2018 passed by the Superintendent of Police, Jaunpur, the order dated 17.10.2018 passed by the Inspector General of Police, Varanasi Zone, Varanasi and the order dated 25.1.2019 passed by the Additional Director General of Police, Varanasi Zone, Varanasi are quashed and are set-aside.

The writ petition is, accordingly, allowed.

Order Date :- 10.03.2022
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(Siddhartha Varma, J.)