

(2022) 10 BOM CK 0120
In the Bombay High Court
Case No : Writ Petition No.5030 Of 2011

Sharad

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 21-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Reserve Police Force Act, 1949 — Section 11(1)
Indian Penal Code, 1860 — Section 376
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(x)

Citation : (2022) 10 BOM CK 0120

Hon'ble Judges : A.S. Chandurkar, J;Urmila Joshi-Phalke, J

Bench : Division Bench

Advocate : S.P.Palshikar, Neerja G.Choubey

Final Decision : Dismissed

Judgement

Urmila Joshi-Phalke, J

1. Heard Shri S.P.Palshikar, learned Advocate for the petitioner and Ms Neerja G.Choubey, learned Advocate for respondents.

2. By this writ petition, the petitioner challenges order dated 31.12.2007 passed by respondent No.3 – the Deputy Inspector General of Police, Group Centre, Central Reserve Police Force), Nagpur by which appeal of the petitioner was dismissed by denying any interference in order passed by the Disciplinary Authority in enquiry proceedings.

3. The petitioner was initially appointed on 1.1.1997 as a Constable in the Central Reserve Police Force and was posted at Nagpur. As per contention of the petitioner, his service record was unblemished and he worked to an utmost satisfaction of his superiors. Since the petitioner was working as a Constable in the Central Reserve Police Force, he has to work as per his deputation. The alleged incident took place when he was working as a Constable in the Central

Reserve Police Force at Nagpur. At the relevant time, he was discharging his duties as Guard duty and he was assigned work to look after arms and ammunition. While working at Nagpur, he was served with chargesheet dated 22.6.2007 along with Hindi transcription of the said chargesheet. As per the said chargesheet, three charges were levelled against him. The charges which were levelled against him, are as follows:

No.1 : That Force No.971270613 C/GD Sharad Bhaskar Manekar, while was posted as Member of the Force at the Central Reserve Police Force, Nagpur and was functioning on the post of C/GD, under Section 11(1) of the Central Reserve Police Force Act, 1949, committed a misconduct on 15.2.2007 by sexually assaulting XYZ who was working as Housemaid at the family residence of Shri A.K.Nargeri, Second Class Officer (Presently posted at Silcher) at Nagpur.

No.2 : That Constable of Force No.971270613 C/GD Sharad Bhaskar Manekar, while was functioning as Constable/GD at the Central Reserve Police Force, Nagpur, committed an act of misconduct under Section 11(1) of the Central Reserve Police Force Act, 1949, where under on 11.4.2007 at about 9:00, he ran away from the Camp and was not on duty, till 11.5.2007 without permission or without obtaining leave sanctioned from the Competent Authority.

No.3 : That Force No.971270613 C/GD Sharad Bhaskar Manekar, while was functioning as Member of the Force at Group Centre, the Central Reserve Police Force, Nagpur, committed a misconduct under Section 11(1) of the Central Reserve Police Force Act, 1949, where under on 12.5.2007 on furnishing a bond of Rs.10,000/- at 21:35 hours and on releasing on bail from the police custody had not resumed the duties and remained absent without obtaining sanctioned leave till 17.5.2007.

4. The petitioner had denied above charges levelled against him by giving his reply dated 1.11.2007. By the said reply, he denied entire allegations against him. As per his contention, on 11.2.2007 he had been to residence of Madam Nargeri. The door of her house was locked. He knocked the door, but nobody has opened the door. He saw that one window was open to some extent and he observed that Madam Nargeri and one LIC Officer Shri Vijay were in a compromised condition and, therefore, he is falsely implicated in the alleged incident. He was not at all concerned with the alleged incident. He was implicated merely because he had seen the incident of extra marital relation of Madam Nargeri.

5. As respondent Nos.2 and 3 were not satisfied with explanations, they decided to initiate an enquiry. The petitioner had participated in the enquiry. The presenting officer had recorded evidence of relevant witnesses. The petitioner had also submitted his reply. After recording evidence and considering material, the Enquiry Officer held that charge Nos.1 to 3 are proved and the petitioner was found guilty in the enquiry.

6. Being aggrieved by final order passed by the Competent Authority, the

petitioner had preferred an appeal before the Appellate Authority i.e. respondent No.3. The Appellate Authority had also dismissed the appeal and confirmed findings of the Competent Authority. By this petition, the petitioner has challenged the findings of the Competent Authority and the Appellate Authority on the ground that the petitioner had not given proper opportunity. The Departmental Enquiry conducted against him is absolutely illegal, it is violation of principles of natural justice and with pre-determinative view to punish the petitioner. He was not allowed to engage a "next friend" in the Departmental Enquiry as the petitioner is a layman who is not aware about the procedure of the Departmental Enquiry. He further challenged the Enquiry Report and findings of the Disciplinary Authority as well as the Appellate Authority on the ground that the Enquiry Officer had conducted and completed the enquiry in a very hasty manner approximately within one month without giving an opportunity and imposed punishment of dismissal. He further submitted that the allegation that the petitioner had sexually assaulted a maidservant was baseless and there was no evidence to prove the said fact. It is further contended that the enquiry conducted was merely farce and violative of principles of natural justice and, therefore, findings recorded by the Enquiry Officer and the Appellate Authority deserve to be set aside.

7. The respondents submitted their response to the petition and denied the contentions. It is contended by respondents that an opportunity to cross-examine witnesses and adduce evidence was given to the petitioner. The petitioner was given an ample opportunity during course of the enquiry to defend his case. The statements of witnesses were recorded by the Enquiry Officer in the presence of the petitioner. The opportunity to cross-examine witnesses was granted to him. The Disciplinary Authority had served a copy of report by giving 15 days' time to submit his representation. Thus, contentions of the petitioner are baseless and not sustainable. There is no merit in the petition and, therefore, interference is not called for.

8. Shri S.P.Palshikar, learned Advocate for the petitioner, submitted that by chargesheet three charges were levelled against the petitioner. It is held by the Enquiry Officer that all charges are proved. In fact, the charge of sexual assault on a maidservant was not proved. He further submitted that the petitioner was also prosecuted for offences punishable under Section 376 of the Indian Penal Code and under Section 3(1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities), Act, 1989. During the trial, the petitioner denied charges and witnesses were cross-examined and the Sessions Court acquitted the petitioner as charges were not proved beyond the reasonable doubt. Learned Advocate for the petitioner further submitted that no appeal is filed against the judgment of acquittal. The witnesses PW6 Rumikumari Khaklari and PW8 Dr.Anil Humne were examined before the Sessions Court. Said witnesses were also examined before the Enquiry Officer also. Admittedly, there was no evidence to prove the charge of offence punishable under Section 376 Of the Indian Penal Code and, therefore, the Sessions Court acquitted the petitioner. The Enquiry

Officer had not considered the evidence before it and wrongly held that charges are proved. Learned Advocate for the petitioner further submitted that if manner, in which the enquiry was conducted, is seen it reveals that the chargesheet was served upon the petitioner on 22.6.2007 and the enquiry was concluded on 17.11.2007. This fact itself is sufficient to show that the enquiry was conducted in a hasty manner without giving a proper opportunity and the same is in violation of the principles of natural justice and, therefore, interference in this petition is called for by setting aside the order of dismissal.

9. In support of his contentions, Shri S.P.Palshikar, learned Advocate for the petitioner, placed reliance upon the decision of the Honourable Apex Court in the case of Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI, reported in (2020) 9 SCC 636 wherein it is held by the Honourable Apex Court that criminal proceeding and departmental proceeding - standard of proof - difference between - reiterated, standard of proof in departmental proceeding, being based on preponderance of probability, is somewhat lower than standard of proof in criminal proceeding, where case has to be proved beyond reasonable doubt. It is further held by the Honourable Apex Court that It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case. After referring to various judgments, the Honourable Apex Court then culled out the ratio of those decisions in paragraph 38. He further placed reliance upon the decision of the Honourable Apex Court in the case of B.C.Chaturvedi vs. Union of India and ors., reported at (1995) 6 SCC 749 wherein the Honourable Apex Court discussed scope of judicial review and held that the Court/Tribunal cannot interfere with findings of fact based on evidence and substitute its own independent findings. He further placed reliance upon the decision of the Honourable Apex Court in the case of G.M.Tank vs. State of Gujarat and anr, reported at AIR 2006 SC 2129 wherein the Honourable Apex Court held that the Criminal Court honourably acquitted the employee - findings to contrary recorded in departmental proceedings, unfair and oppressive - dismissal order liable to be set aside.

10. On the other hand, Ms Neerja G.Choubey, learned Advocate for respondents, submitted that an ample opportunity was granted to the petitioner. However, the petitioner failed to cross-examine witnesses. She invited our attention to show that opportunity to submit reply was also granted. Though the opportunity was granted, the petitioner failed to cross-examine witnesses. The entire incident was proved before the Enquiry Officer. The prosecutrix was from Assam State. The evidence shows that the petitioner was acquainted with the Assami language. The evidence further discloses that he had obtained cassettes of Assami language from Mrs.Nargeri. The petitioner had conceded that he had obtained the said cassettes. If he is not aware about Assami language, question remains why he obtained the cassettes of Assami language. She further submitted that

allegations against the petitioner was that the prosecutrix was not acquainted with anybody. The prosecutrix was working as maidservant at the house of Mrs.Nargeri. The petitioner got acquaintance with the prosecutrix by communicating with her in Assami language by representing himself that he is from Assam and subjected her sexual assault on the promise of marriage. It further revealed during the evidence that the petitioner was already married. He suppressed his identity that he belongs to the State of Maharashtra and represented that he is from Assam and promised her and on the said promise subjected her sexual assault. All these facts are proved before the Enquiry Officer. Learned Advocate for respondents further submitted that the Sessions Court had acquitted the petitioner by giving benefit of doubt.

11. In support of her contentions, Ms Neerja G.Chaubey, learned Advocate for respondents, placed reliance upon the decision in Writ Petition No.1917 of 2021 (Ravindra Prasad Munneshwar Prasad vs. Union of India, thr.Secretary, Ministry of Defence, New Delhi and ors) decided on 31.3.2022 by the Division Bench of this Court wherein one of us is Member (Shri A.S.Chandurkar, J.). The Division Bench of this Court referring judgments of the Honourable Apex Court discussed expressions "honourable acquittal" and held that the expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code and said expressions are coined by judicial pronouncements. It is held by the Division Bench of this Court that after giving benefit of doubt, acquittal could not be treated as to be a honourable acquittal. Learned Advocate for respondents further placed reliance upon the decision of the Honourable Apex Court in the case of Deputy Inspector General of Police and another vs. S.Samuthiram reported at (2013) 1 SCC 598 wherein the Honourable Apex Court held that if any of acquittal in criminal proceedings, there is no impact if acquittal is on account of flawed prosecution, but departmental enquiry is based on adequate evidence. Learned Advocate for respondents further placed reliance upon the decision of the High Court of Delhi in the case of Dinesh Kumar Kain vs. Assistant General Manager, Corporation Bank and anr, reported at 2006 SCC OnLine Del 448 wherein the High Court of Delhi held that acquittal of employee on benefit of doubt – decision of bank not to grant full salary for the duration of suspension, in the circumstances, affirmed by the order denying continuity of service for the purpose of gratuity and pension, quashed. On the basis of these decisions, learned Advocate for respondents submitted that proper opportunity was granted to the petitioner. The enquiry was conducted by observing the principles of natural justice and hence no interference is called for.

12. Admittedly, by this petition, the petitioner had challenged findings of the Enquiry Officer and the order passed by the Competent Authority by invoking the writ jurisdiction. This Court has limited jurisdiction in exercise of powers under Article 226 of the Constitution of India. It is well settled that in exercise of judicial review the Court does not act as an Appellate Forum over findings of the Disciplinary Authority. The Court does not re-appreciate the evidence on the basis of which findings of misconduct has been arrived at in the course of

Disciplinary Enquiry. The Court in exercise of judicial review must restrict its review to determine whether, (a) rules of natural justice have been complied with, (b) findings of misconduct is based on some evidence, (c) statutory rules governing the conduct of Disciplinary Enquiry have been observed, and (d) findings of the Disciplinary Authority suffer from any perversity or punishment is disproportionate to proved misconduct.

13. Learned Advocate for the petitioner urged that no proper opportunity to represent through a "next friend" was granted to the petitioner. The record shows that first time the petitioner had raised this issue before this Court. The petitioner had not filed any application before the Enquiry Officer seeking permission to engage a "next friend" in the Departmental Enquiry by raising a ground that he is a layman and not aware about procedure of the Departmental Enquiry. Learned Advocate for the petitioner, while hearing was going on, had not pointed out that at any point of time the petitioner had filed an application before the Enquiry Officer, however the Enquiry Officer had not considered the same and rejected the prayer. Even from the order passed by the Appellate Authority, nowhere it reveals that the petitioner had raised ground that his prayer for appointing a "next friend" was not considered. Thus, it is apparent that for the first time the said ground was raised by the petitioner that opportunity to represent a "next friend" was not granted to him.

Even if for the sake of argument the contention of the petitioner is accepted, in catena of decisions the Honourable Apex Court held that there is no absolute right in favour of delinquent officer to be represented in departmental proceedings through agent of his choice and the same can be restricted by employee.

14. The Honourable Apex Court, in the case of *The Rajasthan Marudhara Gramin Bank (RMGB) & anr vs. Ramesh Chandra Meena and anr* reported at 2022 LiveLaw (SC) 6, referring decisions in the cases of *Dunlop Rubber Co. (India) Ltd vs. Workmen*, reported at (1965) 2 SCR 139 and *Kalindi and ors vs. Tata Locomotive and Engineering Company Limited* reported at (1960) 3 SCR 407 held that there is no per se right to representation in the departmental proceedings through a representative through own union unless the company by its Standing Order recognized such a right. It is observed that refusal to allow representation by any Union unless the Standing Orders confer that right does not vitiate the proceedings. It is further observed that in holding domestic enquiries, reasonable opportunity should be given to the delinquent employees to meet the charge framed against them and it is desirable that at such an enquiry the employee should be given liberty to represent their case by persons of their choice, if there is no standing order against such a course being adopted and if there is nothing otherwise objectionable in the said request. It is further observed that denial of such an opportunity cannot be said to be in violation of principles of natural justice. It is further observed by the Honourable Apex Court, by referring the decision in the case of *Crescent Dyes and Chemicals Limited vs.*

Ram Naresh Tripathi reported at (1993) 2 SCC 115, that in the departmental proceedings the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent.

15. In the case in hand, herein, learned Advocate for the petitioner had not pointed out that there was Rule or Standing Orders which give right to the petitioner to seek permission to represent him through agent. No such Rule or Law is specifically pointed out which confers right to the petitioner and, therefore, contention of the petitioner that the opportunity was not granted to him and, therefore, it is violation of principles of natural justice. It is held by the Honourable Apex Court in the case of The Rajasthan Marudhara Gramin Bank (RMGB) & anr vs. Ramesh Chandra Meena and anr cited supra that denial of such an opportunity cannot be said to be the violation of principles of natural justice.

16. The other grounds raised by the petitioner are that the enquiry was conducted in a hasty manner without giving him proper opportunity and the charges levelled against him are not proved before the Enquiry Officer. We have perused the Enquiry Report. The charge levelled against the petitioner was that being a member of CISF, he committed a misconduct by sexually assaulting XYZ who was working as maidservant at the residence of Shri A.K.Nargeri, Second Class Officer at Nagpur. Further charge levelled against the petitioner was that after the incident, he went on leave without prior permission and without sanction and thereby committed misconduct. To substantiate charges levelled against the petitioner, the enquiry was conducted. The petitioner denied charges i.e. charge No.1 and 3. However, the petitioner admitted charge No.2. It is recorded by the Enquiry Officer that evidence of all prosecution witnesses mentioned in the memo were recorded in presence of constable Sharad s/o Bhaskar Manekar i.e. the petitioner and was given full opportunity of defence. The recording by the Enquiry Officer further shows copy of deposition of each witness was given to him and also time from 5.10.2007 to 19.10.2007 was also given for presenting his written defence and list of witnesses.

Accordingly, on 19.10.2007 he submitted his defence in writing and also produced documents. He had produced on record prescription regarding treatment of his wife in hospital at Nagpur dated 23.1.2006, intimation from Police Station dated 12.5.2007 and 13.5.2007, medical certificate issued on 29.4.2007 by the Primary Health Centre at Buldhana and letter number P8-1/2007-ESst-2 dated 18.5.2007 issued by Additional Inspector General of Police, Group Centre, Nagpur and request application filed by him for leave of three days. It further reveals from the Enquiry Report that despite grant of full opportunity the petitioner could not produce any witness in his defence. During the course of preliminary enquiry, as the petitioner had not admitted the guilt

with regard to charge Nos.1 and 3, evidence was adduced. Witness No.1 prosecutrix was examined and she narrated before the Enquiry Officer that Constable Sharad s/o Bhaskar Manekar, i.e. the petitioner used to meet her time and again and used to communicate her in Assami language. The Constable was working with the officer residing behind her quarter. The petitioner also represented himself to her as "Raj" and to be resident of Assam. He further represented that he is unmarried and wants to marry her. She further disclosed that he subjected her sexual assault on the promise of marriage. Though sufficient opportunity was granted to the petitioner, neither he cross-examined the prosecutrix nor contradicted her deposition. It further revealed that after transfer, the petitioner reported at Nagpur and was posted at headquarters. He was posted as Assistant to Deputy Commandant Shri S.K.Yadav. The Government residence of Shri Yadav was at a distance of about 15-20 yards from Type-IV, Quarter No.15 and residence of Shri A.K.Narger, Second Class Officer, was situated at quarter No.7 (Type-IV) and the back portion of both the quarters were situated opposite to each other. It further revealed that Shri A.K.Narger was posted as Second Grade Officer at Group Centre at Silchar and at his Government residence his wife was residing along with her son and a maidservant i.e. the prosecutrix. Constable Sharad Bhaskar Manekar was working as Security Assistant. It further revealed that Mrs.Narger was working in LIC office and her duty hours were 9:30 am to 6:00 pm and her son was attending school from 7:00 am to 3:00 pm.. It further came on record during the enquiry that the prosecutrix was working at the house of Mrs.Narger who is from Assam. She is uneducated and only understands Assami and Bodo languages. She had no knowledge of language Hindi or any other language.

17. During the enquiry, it revealed that the petitioner used to meet the prosecutrix talking to her in Assami language. The said fact was supported by witnesses Shri A.K.Narger, Second Class Officer, Mrs.Narger and Constable Wasudeo Saha. The prosecution witness Saha had narrated that he has seen the petitioner talking to the prosecutrix. It further revealed from the evidence of Mrs.Narger that the petitioner had gone to her house in March-April 2006 for repairing cooler. He had communicated with Mrs.Narger in Assami language. The petitioner had also obtained cassettes from Mrs.Narger. The fact is supported by Mrs.Narger and the prosecutrix in their depositions. The petitioner had also admitted the fact of obtaining cassettes of Assami language from Mrs.Narger and returning of the same to said Saha who was working at the house of Mrs.Narger. Though the petitioner had denied his communication with Mrs.Narger in Assami language, he admitted that he obtained the cassettes which were in Assami language. It is observed by the Enquiry Officer that obtaining cassettes from Mrs.Narger establishes that he has knowledge of Assami language. From the evidence of the prosecutrix it revealed to the Enquiry Officer that the petitioner represented her that his mother is not alive and he is the only earning member in his family. His father, brother and sister-in-law reside in his house. Similar statement is given by him to the Enquiry Officer regarding

his family particulars. It further revealed from the evidence recorded before the Enquiry Officer that the alleged incident of sexual assault was taken place when Mrs.Nargeri was out of station. After return of Mrs.Nargeri, the prosecutrix disclosed the said incident to her. Subsequently, it further revealed that the petitioner is married and from Maharashtra and is residing along with his family. Shri A.K.Nargeri called the petitioner and made enquiry with him and also scolded him for developing contacts with his maidservant being married person and making a false promise to marry her and Shri A.K.Nargeri warned him not to repeat such acts in future. The said entire evidence remained unchallenged during the enquiry as the petitioner had not cross-examined witnesses or contradicted them. From statements of the prosecutrix, Shri A.K.Nargeri, Mrs.Nargeri and Constable Saha, it revealed that the petitioner by representing himself as Assamese proposed the prosecutrix and established physical relation with her and sexually assaulted her. Having close scrutiny of documents on record, the Enquiry Officer was satisfied that the petitioner had knowledge of language Assami, contacted the prosecutrix, representing himself to her to be Assami developed relation with her and promising to marry her subjected her sexual assault. Therefore, the First Information Report was lodged by the prosecutrix on 9.4.2007 with the help of Mrs.Nargeri. A copy of the First Information Report was also sent to the Additional Deputy Inspector General Of Police, Group Centre, Nagpur. The Prosecutrix was also referred for medical examination. The evidence of Nurse Asha Wankhede was also recorded to show that the prosecutrix was medically examined. Thus, the prosecutrix was subjected to sexual assault on 15.2.2007 and the same was proved before the Enquiry Officer and, therefore, it was held by the Enquiry Officer that charge No.1 is proved. Charge No.2 is admitted by the petitioner. With regard to charge No.3, the evidence shows that the petitioner was absconding from the camp from 11.4.2007 to 11.5.2007 and on 12.5.2007 he was reported on duty at about 13.45 hours. The communication from the Additional Deputy Inspector General of Police to Sonegaon Police Station for seeking information about the petitioner, as he was absent from duties, is revealed. As the petitioner failed to resume duties, he was ordered to report duty by issuing communication dated 18.5.2007. Thereafter, he reported on duty on 18.5.2007. The petitioner in his letter in writing stated that he was released on bail on 12.5.2007 and he was required to attend the Sonegaon Police Station and, therefore, he could not resume duty. Thus, upon scrutiny of the statements of witnesses, documents and various circumstances on record, the Enquiry Officer has come to conclusion that charges levelled against the petitioner are proved. The Competent Authority had considered the evidence in the enquiry and accordingly imposed the punishment. As the offence committed by the petitioner was of moral turpitude, punishment of dismissal was imposed on him. Against the said order, the petitioner preferred the appeal. The Appellate Authority had considered the Enquiry Report and refused to interfere by observing that charges levelled against the petitioner are proved. The Disciplinary Authority as well as the Appellate Authority had considered the nature of the offence and indisciplined attitude of the petitioner

and impose the punishment accordingly.

18. The other ground raised by the petitioner is that he was acquitted from the charges. Learned Advocate Ms Neerja G. Chaudhary for respondents rightly relied upon the decision in Writ Petition No.1917 of 2021 (Ravindra Prasad Munneshwar Prasad vs. Union of India, thr. Secretary, Ministry of Defence, New Delhi and ors) cited supra wherein the Division Bench of this Court had considered the aspect of "honourable acquittal" and held that the expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code and said expressions are coined by judicial pronouncements. It is held by the Division Bench of this Court that after giving benefit of doubt, acquittal could not be treated as to be a honourable acquittal. The Honourable Apex Court in the case of Deputy Inspector General of Police and another vs. S. Samuthiram cited supra also held that if any of acquittal in criminal proceedings, there is no impact if acquittal is on account of flawed prosecution, but departmental enquiry is based on adequate evidence. The Honourable Apex Court in the case of Maharashtra State Road Transport Corporation (S) vs. Dilip Uttam Jayabhay (S) reported at 2022 SCC OnLine SC 1 has also held that as per cardinal principle of law an acquittal in a criminal trial has no bearing or relevance on the disciplinary proceedings as the standard of proof in both the cases are different and the proceedings operate in different fields and with different objectives. The Honourable Apex Court in the case of Indian Overseas Bank and ors vs. Om Prakash Lal Srivastava reported at 2002 LiveLaw (SC) 66 also by referring the decision in the case of Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI, cited supra held that the standard of proof in departmental proceedings, being based on preponderance of probability, is somewhat lower than the standard of proof in criminal proceedings where the case has to be proved beyond reasonable doubt. Thus, contention of the petitioner that he was acquitted in the crime trial has no basis for his dismissal. As observed by the Division Bench of this Court as well as by the Honourable Apex Court, the acquittal could not be treated as to be a "honourable acquittal". As observed by the Honourable Apex in the case of Maharashtra State Road Transport Corporation (S) vs. Dilip Uttam Jayabhay (S) cited supra that an acquittal in a criminal trial has no bearing or relevance on the disciplinary proceedings as the standard of proof in both the cases are different and the proceedings operate in different fields and with different objectives, the submission of learned Advocate for the petitioner is not sustainable. Learned Advocate for the petitioner relied upon the decision in the case of Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI, cited supra wherein also the same principle is reiterated standard of proof in departmental proceeding, being based on preponderance of probability, is somewhat lower than standard of proof in criminal proceeding, where case has to be proved beyond reasonable doubt. It is further held by the Honourable Apex Court that it is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is

exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case. Learned Advocate for the petitioner also relied upon the decision of the Honourable Apex Court in the case of B.C.Chaturvedi vs. Union of India and ors., cited supra wherein the Honourable Apex Court lays down the ratio regarding scope of judicial review and held that the Court/Tribunal cannot interfere with findings of fact based on evidence and substitute its own independent findings. We are in respectful agreement with the same.

19. Admittedly, this Court cannot re-appreciate and re-analyze the evidence unless it shows findings are perverse. It is recently observed by this Court in Laxman B.Panmant vs. Nuclear Power Corporation of India, reported at 2022(4) Mh.L.J. 603 that the writ Court does not re-appreciate evidence unless it can be shown that findings are perverse. The evaluation of evidence is to be left to the fact finding committee.

20. Though in the present the case the petitioner had claimed that opportunity to engage a "next friend" and to examine and to cross-examine the witnesses were not given to him, it appears that for first time he raised the issue that his request for engaging a "next friend" was not considered. The said submission is not substantiated by any material. On the contrary, the Enquiry Report shows that the petitioner was supplied with all copies of statements of the witnesses. The Enquiry Officer further noted that the opportunity of cross-examination was also given to him. However, the petitioner had not availed the same. Thus, the contention of the petitioner that the enquiry was conducted in a hasty manner without giving him a proper opportunity is without substance. The record shows that time to time the opportunity was granted to the petitioner. The copy of the Enquiry Report was also supplied to the petitioner and opportunity before imposing the punishment was also granted to him to make his submission on the point of punishment.

21. The petitioner was working with the Central Reserve Police Force. The integrity and honesty are essence of the organization. The discipline in the armed forces is absolutely imperative and no compromise can be made as far as the discipline in the armed forces is concerned. In the instant case, the petitioner was working as Constable in the Central Reserve Police Force which is a responsible force for providing security. In the nature of the force, wherein the petitioner was serving, sense of integrity, commitment and discipline are paramount. No indulgence or latitude can be granted when the case of sexual assault is considered on the touchstone of preponderance of probabilities. To condone such type of misconduct would result in ramifications. The indiscipline in the force cannot be compromised. On the contrary, it was duty of the petitioner to safeguard the interests of the prosecutrix. However, the petitioner had given false promise of marriage when he was already married and subjected her to sexual assault and betrayed her trust. In the background of facts and considering the indiscipline in the force by the petitioner which cannot be compromised, we

are not inclined to accept that the punishment of dismissal imposed by the Appellate Authority by order dated 31.12.2007 was grossly disproportionate to the quantum of offence.

22. As observed that in exercise of judicial review this Court does not act as an Appellate Forum over findings of disciplinary which the finding of misconduct has been arrived at in the course while exercising writ jurisdiction, the exercise of judicial review is restricted to determine whether the rules of natural justice have been complied with. The noting of the Enquiry Officer that every opportunity was given to the petitioner to examine the witnesses as well as to lead the evidence shows that there is no violation of natural justice. This fact itself is sufficient to show that the rules of natural justice have been complied with. The statute rules governing the conduct appears to be observed by giving proper opportunity to the petitioner. The petitioner had not made out the case that the findings of the misconduct is based on no evidence. In fact, the findings of misconduct is based on the oral evidence of several witnesses. The petitioner also failed to show that the findings of the Disciplinary Authority suffer from perversity. The enquiry was conducted in accordance with the principles of natural justice. The findings of the Enquiry Officer and the Disciplinary Authority are sustainable with reference to the evidence which was adduced during the enquiry.

23. In this view of the matter, as the writ petition is devoid of merits, the same deserves to be dismissed and the writ petition is dismissed.