HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No. 36081 of 2017

Between:

C. Govinda Rajulu

.....PETITIONER

AND

The State of Andhra Pradesh,
Rep.by its Principal Secretary,
Home Department,
Secretariat, Velgapudi,
Guntur District and 3 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **04.08.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE Dr. JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

Dr. K. MANMADHA RAO, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
&
THE HON'BLE Dr. JUSTICE K. MANMADHA RAO

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! Counsel for the Petitioner : Sri Manoj Kumar Bethapudi,
Representing Sri Vijaya Kumar Sata

Counsel for the Respondents : Sri G. V. S. Kishore Kumar,
GP for Services-I

< Gist :

> Head Note:

? Cases Referred:

1. (2009) 2 SCC 570
2. 2021 SCC Online AP 4450
3. (2020) 9 SCC 471
4. 2022 SCC Online SC 1282
5. (2013) 6 SCC 530
6. (1997) 6 SCC 241
7. (2013) 1 SCC 297
8. (2009) 2 SCC 570
9. (1995) 6 SCC 749
10. (2023) 3 SCC 622

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE Dr. JUSTICE K. MANMADHA RAO

WRIT PETITION No. 36081 of 2017

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Manoj Kumar Bethapudi, learned counsel, representing Sri Vijaya Kumar Sata, learned counsel for the petitioner and Sri G. V. S. Kishore Kumar, learned Government Pleader, Services-I, appearing for the respondents.

2. By means of this writ petition under Article 226 of the Constitution of India, the petitioner is challenging the order of the Andhra Pradesh Administrative Tribunal (in short 'APAT') in O.A.No.5535 of 2014, dated 15.09.2017, by which, the petitioner's OA was dismissed.

3. The petitioner was appointed as Junior Assistant in 2nd Battalion, APSP, Kurnool on 17.08.1994. He was placed under suspension vide Rc.No.A6/PR-17/2013 (D.O.No.267/2013), dated 22.05.2013, on the allegation of misbehavior with another lady junior assistant, however, he was reinstated into service and charge memo dated 03.06.2013 was issued.

4. The articles of charges are as follows:

"Article-I: That Sri C. Govinda Rajulu, Junior Assistant (u/s), 2nd Battalion, APSP, APSP, Kurnool has exhibited most reprehensible misconduct in misbehaving with Smt. G. Jhancy Lakshmi, Junior Assistant on 10.05.2013 afternoon during the lunch hours, while Smt. G. Jhansi lakshmi, Junior Assistant in the office, he obstructed her by stretching his leg across when she was going for lunch and demanded to fulfill his favours. When, she revolted and return to her seat, he followed her, seated by the side of her and stated

harassing mentally by caught hold her hand with *mala fide* intension, behaved in a most indecent manner, tried to outrage her modesty, threatened her with dire consequences not to talk with other and thereby created nuisance in the office which is highly reprehensible"

"Article-II: He was appointed as Junior Assistant on 17.08.1994 and completed more than 18 years of service. During his 18 years of service, he was suspended for 02 times for various misconducts, awarded 06 punishments viz., RTSP-01, PPIs-02 and Censure-03 and utterly failed to change his attitude."

5. The petitioner submitted explanation denying the charges.

6. On 25.10.2013 the Enquiry Officer was appointed, the enquiry was conducted with participation of the petitioner under Rule 20 of the A.P.Civil Services (Classification, Control and Appeal) Rules 1991 (in short 'the Rules 1991'). The Enquiry Officer-Assistant Commandant, 2nd Battalion, APSP Kurnool submitted a detailed report on the departmental enquiry dated 11.11.2013. The Enquiry Officer found that the charge is 'proved'. The Disciplinary Authority being in agreement with the findings of the Enquiry Officer, served the copy of the Enquiry Officers Report to the petitioner vide memo dated 13.11.2013, giving opportunity to submit representation to the conclusions of the Enquiry Officer. The petitioner submitted reply dated 04.12.2013. The Disciplinary Authority-the Commandant, 2nd Battalion, APSP, Kurnool, after considering the reply, passed the order of punishment dated 26.12.2013, awarding the punishment of removal from service with immediate effect, though finding it a fit case for dismissal from service, but taking a lenient view, as recorded in the order of removal itself. The petitioner's suspension period was treated as not on

duty. The petitioner's appeal was rejected by the Deputy Inspector General of Police, APSP Battalions, Kurnool Range, Kurnool on 25.08.2014.

7. Challenging the order of removal and the appellate order, the petitioner preferred O.A.No.5535 of 2014 (*C. Govinda Rajulu v. Government of Andhra Pradesh, rep. by its Principal Secretary & ors*) which has been dismissed by the APAT by judgment dated 15.09.2017.

8. Learned counsel for the petitioner submitted that there was no evidence to support the finding on the charge proved. He placed reliance in ***Roop Singh Negi v. Punjab National Bank***[1] to contend that in the departmental enquiry conclusion should be based on evidence and not on conjectures and surmises.

9. He further submitted that in view of Rule 3-D of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 (in short 'APCS Rules 1964') the Complaints Committee will be deemed to be an Inquiry Committee and the report submitted by it shall be deemed to be an inquiry report under A.P.Civil Services (Classification, Control and Appeal) Rules, 1991. But the enquiry was not conducted by the Complaints Committee. The disciplinary authority straight away got conducted the enquiry by appointing the Enquiry Officer of his own. He submitted that on such enquiry report, the petitioner could not be punished. There was as such no material to base the order of penalty.

[1] (2009) 2 SCC 570

10. Learned counsel for the petitioner placed reliance in the case of ***Nagaram Balakrishna v. State of AP***[2] in support of above contention.

11. Learned counsel for the petitioner next submitted that in any case, the punishment of removal from service is highly disproportionate to the charges.

12. Learned Govt.Pleader submitted that the charges are grave in nature. Enquiry was conducted with full opportunity to the petitioner, in which the charges were found proved. There is ample evidence to support the finding. The submission of the petitioner's counsel that there is no evidence is not correct. Placing reliance in ***Pravin Kumar v. Union of India***[3] he submitted that the finding being based on evidence this Court while exercising the power of judicial review would not interfere with the same.

13. Learned Govt. Pleader further submitted that the petitioner did not raise the question of the authority conducting the enquiry nor did raise the plea in the light of Rule 3-D of the APCS Rules 1964. He submitted that even before APAT, the petitioner did not allege any procedural defects in issuing the charge memo and in conducting enquiry and thereafter. Referring to para-2 of the judgment of the APAT, he submitted that the only point contended before the APAT was that the conclusion arrived at by the Enquiry Officer was not correct and in any event the punishment of removal was highly disproportionate.

14. Learned Govt. Pleader further submitted that considering the nature of the charge proved and its seriousness, the punishment of removal from

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[2] 2021 SCC Online AP 4450
[3] (2020) 9 SCC 471

service cannot be said to be disproportionate. The disciplinary authority itself by taking a lenient view, instead of passing of the order of dismissal, passed the order of removal from service in which further interference is not called for.

15. Alternatively, the learned Govt. Pleader placing reliance in the cases of ***Inspector of Panchayats and District Collector Salem v. S. Arichandran***[4] and ***LIC v. A. Masilamani***[5], submitted that if the enquiry is found to be vitiated and the order of punishment is set aside, the matter is to be remitted to the disciplinary authority to conduct the enquiry from the stage it stood vitiated.

16. Learned counsel for the petitioner submitted in reply that the plea with respect to Rule 3-D of APCS Rules 1964 was very much taken before the APAT in the original application in para-4, but was not considered by APAT.

17. We have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

18. The following points arise for our consideration and determination;

A) Whether the enquiry by the Enquiry Officer (Assistant Commandant, 2nd Battalion, APSP Kurnool) is without jurisdiction in view of the plea of Rule 3-D of APCS (Conduct) Rules 1964? and on such enquiry report, the order of penalty could not be passed by the Disciplinary Authority?

B) Whether the finding of the Enquiry Officer and accepted by the Disciplinary Authority is not supported by evidence?

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[4] 2022 SCC OnLine SC 1282
[5] (2013) 6 SCC 530

C) Whether the punishment of removal imposed on the petitioner is shockingly disproportionate to the proved charge?

Consideration of Point-A:

19. A plea was taken by the petitioner in para-4 of the Original Application that if the petitioner committed any mistake or misbehaved with the lady colleague, and if the disciplinary authority felt that the petitioner committed any mistake on his lady colleague, the authority had to refer the issue to the disciplinary committee, as per Rule 3-D of APCS (Conduct) Rules 1964.

20. Para-4 of the Original Application is reproduced as under:

> "It is also relevant to submit that if the applicant committed any mistake nor misbehaved with his colleague the authorities ought to have lodge a criminal complaint before the police against the applicant, but the authorities conducted an enquiry with an intention to punish the applicant for one reason or the other and accordingly held that charges proved and the applicant was removed from service. **It is submitted that if the disciplinary authority feels that if the applicant is committed any mistake on his lady colleague the authority have to refer the issue to the disciplinary committee as per rule 3-D of the CCA (CCS) rules. But without considering the same the disciplinary authority state away conducted an enquiry with an intention to punish the applicant.** It is submitted that the disciplinary authority without considering the representation submitted by the applicant and came to a conclusion that the applicant committed mistake and issued punishment orders. The disciplinary authority also taken into consideration of the past service of the applicant and issued the final orders vides Proceedings Rc.No.A6/PR-17/2013 (D.O.No.635/2013) dated 26-12-2013 removing the applicant from service. It is submitted that the action of the respondents is highly illegal, arbitrary and double jeopardy."

21. We made specific query to the learned counsel for the petitioner, if such a plea based on Rule 3-D of APCS (Conduct) Rules 1964, was taken in the petitioner's reply to the charge memo; during the enquiry; while submitting his explanation to the enquiry report or even at the appellate stage, he could not point out any such plea from the records.

22. To our next query to the learned counsel for the petitioner, if the plea as is referred in para-4 of the Original Application, was raised during arguments and was pressed by the petitioner, before the Tribunal, he submitted that there is nothing on record to show if such plea was pressed before the Tribunal. He also could not point out any deposition in the writ petition that such plea was pressed but was not considered by the Tribunal.

23. Consequently, we are of the view that the Tribunal did not commit any illegality in not considering a plea which was not pressed before it.

24. However, we proceed to consider the plea as raised before us, based on Rule-3D of APCS (Conduct) Rules 1964.

25. The charge-I against the petitioner related to the petitioner's most reprehensible misconduct in misbehaving with lady junior assistant on 10.05.2013 afternoon during the lunch hours by obstructing her way, by stretching his leg across when she was going to lunch and demand to fulfill his favours, catching hold her hand with *mala fide* intention, in a most indecent manner, trying to outrage her modesty, threatening her with dire consequences, creating nuisance in the office which was highly reprehensible.

26. The complaint against the petitioner was filed on 15.05.2013 for the incident dated 10.05.2013, upon which after the preliminary enquiry, charge memo dated 03.06.2013 was served to the petitioner. The Enquiry Officer was appointed on 25.10.2013 and he after completing the enquiry submitted the enquiry report, dated 11.11.2013, which was served to the petitioner vide Memo dated 13.11.2013 to which he had submitted reply dated 04.12.2013.

27. By the aforesaid time the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short 'the Act 2013') had not come into force. It came into force on 9th December 2013.

28. So, it is a case 'Pre era the Act 2013'. Then the 'Visakha Guidelines' were prevalent.

29. In ***Vishaka and others v. State of Rajasthan and others***[6] the Hon'ble Apex Court laid down certain guidelines and the norms for due observance at all work places or other institutions for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, until a legislation was enacted for the purpose.

30. It is relevant to reproduce para-17 of ***Vishaka*** (supra), in which the guidelines and norms were prescribed (known as 'Visakha Guidelines'), as under:

> **"17.** The GUIDELINES and NORMS prescribed herein are as under:
>
> HAVING REGARD to the definition of "human rights" in Section 2(*d*) of the Protection of Human Rights Act, 1993,
>
> TAKING NOTE of the fact that the present civil and penal laws in India do not *adequately* provide for specific protection of women from sexual

[6] (1997) 6 SCC 241

harassment in workplaces and that enactment of such legislation will take considerable time,

It is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. *Duty of the employer or other responsible persons in workplaces and other institutions*:

It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. *Definition*:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

(*a*) physical contact and advances;

(*b*) a demand or request for sexual favours;

(*c*) sexually-coloured remarks;

(*d*) showing pornography;

(*e*) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. *Preventive steps*:

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(*a*) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

(*b*) The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(*c*) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(*d*) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. *Criminal proceedings*:

Where such conduct amounts to a specific offence under the Penal Code, 1860 or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator *or their own transfer.*

5. *Disciplinary action*:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer **in accordance with those rules**.

6. *Complaint mechanism*:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

7. *Complaints Committee*:

The complaint mechanism, referred to in (6) above, should be adequate to provide, **where necessary**, **a Complaints Committee**, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

8. *Workers' initiative*:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. *Awareness*:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. *Third-party harassment*:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993."

31. As per Guideline No.5, where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with 'those Rules'. Those rules, in the present case are the Rules of 1991.

32. Guideline No.6 provided for the complaint mechanism. It provided that whether or not conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

33. Guideline No.7 related to the complaints committee. It provided that the complaint mechanism, referred to in Guideline No.6, should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of confidentiality.

34. Rule 3C of the APCS (Conduct) Rules 1964 after amendment of the Rules 1964 vide G.O.Ms.No.322 General Administration (Ser.C) Department, dated 19.07.1999, provided as under:

> "**Rule 3-C. Prohibition of sexual harassment of working women:-**
> No Government servant shall in the performance of his Official duties act in a discourteous and discriminate manner with any working women or indulge in sexual harassment either directly or by implication.
> **Explanation:-** For the purpose of this rule, 'Sexual Harassment' includes such unwelcome activities either directly or by implication have--
> (a) physical contact and advances;
> (b) a demand or request for sexual favours;
> (c) sexually coloured remarks;
> (d) showing any pornography;
> (e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.
> Such conduct which amounts to a special offence under the Indian Penal Code, 1860 or under any other law for the time being in force."

35. Rule 3D of the APCS (Conduct) Rules 1964, after amendment of the Rules 1964, vide G.O.Ms.No.556 General Administration (Sec.C) dated 14.12.2005 provided as under:

> "**Rule 3-D:** Complaints Committee will be deemed to be an Inquiry Committee and the report submitted by it shall be deemed to be an inquiry report under A. P. Civil Services (Classification, Control and Appeal) Rules, 1991".

36. As per ***Vishaka Guidelines*** (supra), for the conduct of causing sexual harassment of women in workplace, which amounts to misconduct in employment, appropriate disciplinary action should be initiated in accordance with the relevant service rules. An appropriate complaint mechanism was also directed to be created, to ensure time bound treatment of complaints, which complaint mechanism should be adequate, to provide where necessary, a 'Complaints Committee'.

37. The constitution of any such Complaints Committee or its existence at the relevant point of time, in the concerned services relating to the petitioner, has not been brought to our notice.

38. It was after the judgment of the Hon'ble the Apex Court in ***Medha Kotwal Lele v. Union of India***[7], that the Act 2013 was enacted.

39. Section 4 of the Act 2013 provides that every employer of a workplace shall, by order, in writing, constitute a Committee, known as "Internal Complaints Committee". It shall consist of the members as under Sub-Section 2 (a), (b) & (c). Section 5 provides for Notification of 'District Officer' for every District to exercise powers or discharge functions under the Act. Section 6 provides for constitution and jurisdiction of Local Committee in every district 'to receive complaints of sexual harassment from establishments' where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself. Section 9 in Chapter-IV of the Act provides for compliant of sexual harassment. Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, and in case it is not so constituted to the Local Committee, within a period specified therein.

40. Section 10 of the Act then provides for conciliation, before initiating an enquiry under Section 11 at the request of the aggrieved woman to settle the matter between her and the respondent through conciliation, providing further that no monetary settlement shall be made as a basis of conciliation.

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[7] (2013) 1 SCC 297

Where settlement is arrived, the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation, and in such cases, no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

41. Section 11 of the Act 2013 provides for a detailed procedure of enquiry in to the complaint. The Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed. For the purpose of making an inquiry, the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of certain matters. The inquiry shall be completed within a period of ninety days.

42. Section 13 of the Act 2013 provides that on the completion of an inquiry, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer, and such report, shall be made available to the concerned parties. Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter, and where the Internal

Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, (i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed; (ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with section 15. Sub-section (4) of Section 13 provides that the employer or the District Officer shall act upon the recommendation within sixty days of the receipt of such recommendation.

43. Section 18 of the Act 2013 provides for appeal to any person aggrieved from the recommendations *inter alia,* made under sub-Section (2) of Section 13 or under clause (i) or clause (ii) of sub-section (3) of Section 13, to the Court or Tribunal in accordance with the provisions of the relevant service rules and in the absence of such rules, in such manner, as may be prescribed. Rule 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (in short 'the Rules 2013') provides that the appeal against the recommendations of the Committee under Section 13 (2), (3) etc., may be preferred to the Appellate Authority notified under Section 2 clause (a) of the Industrial Employment (Standing Orders) Act 1946.

44. Thus, under the scheme of the Act 2013 and the Rules 2013, there is an opportunity of conciliation, at the request of the aggrieved woman, upon which the Internal Committee may take steps to settle the matter between the complainant and the respondent and if the matter is settled under Section 10, no further enquiry shall be taken under Section 11. In case the enquiry is conducted under Section 11, on completion of the enquiry, if the Internal Committee finds that the charges are proved, it shall make recommendations to the employer under Section 13 (3), and at that stage, the person aggrieved from such recommendation has statutory remedy of appeal under Section 18, which lies to the Court or Tribunal, in accordance with the provisions of the relevant service rules, and in the absence of such rule to the appellate authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), as prescribed by Rule 11 of the Rules 2013.

45. We have referred to certain provisions of the Act 2013, and the Rules 2013, as above, for the purpose that after the complaint, the respondent/charged employee, has some beneficial provisions, like conciliation before the Internal Committee to settle the dispute and also right of appeal against the recommendations of the Internal Committee, under the Act 2013, but any such protection/benefit was not available to such a person except what may be available under the relevant service Rules in 'Pre 2013 Act'.

46. Under the Service Rules 1991, the procedure of enquiry was provided and for thereafter, as well. So, even if the enquiry was not got conducted by the Complaints Committee, if any such committee existed,

(nothing has been brought on record regarding such Committee), in our considered view, no prejudice is shown to have been caused to the petitioner's case, by conducting of the enquiry by the Enquiry Officer appointed by the Disciplinary Authority under Rule 20 of the Rules 1991. If the Complaints Committee existed the most that may be said, is that the matter should have been enquired by such Committee under Rule 3-D of the APCS (Conduct) Rules 1964, but if it was so, the petitioner ought to have raised such objection at the stage of enquiry itself, whereas no such objection was taken at any stage. After the disciplinary proceedings have gone against the petitioner, he cannot be permitted to take a 'U' turn and say that the enquiry was not conducted by the Complaints Committee under Rule 3-D of the APCS (Conduct) Rules, 1964.

47. If the Complaints Committee was not constituted, the Vishaka guidelines providing for such Committee in complaint mechanism, where necessary, the enquiry was to be conducted by the Enquiry Officer under the Rules 1991. Such an enquiry having been conducted by the Enquiry Officer under the Rules 1991 there would be no illegality.

48. In view of the above, the argument based on Rule 3D of the APCS (Conduct) Rules 1964, is unsustainable and is rejected.

49. The judgment in the case of ***Nagaram Balakrishna*** (supra) is of no help to the petitioner. It is not applicable to the facts of the present case. A perusal of the judgment shows that the incident occurred in July, 2020, the complaint was filed and the enquiry was conducted by the special committee, whereas the Internal Complaints Committees were also formed under the Act in

respect of General Administration Department. Two committees were existing. The petitioner therein had challenged the formation of another special committee for the purposes of his case, as bad in law, while challenging the suspension order in the writ petition. In the present case, as aforesaid, the petitioner did never raise any objection with respect to the appointment of the enquiry officer, before whom he participated without any objection and even after completion of the enquiry did not raise any such objection at any stage of the disciplinary proceedings. ***Nagaram Balakrishna*** (supra) is also a case post 2013 Act.

50. Thus, considered on point-A, we hold that the report of the enquiry officer is not without jurisdiction and based thereon the order of removal from service against the petitioner, cannot be faulted, which calls for no interference.

Consideration of Point-B:

51. We now proceed to consider the next submission that the finding of the Enquiry Officer, as accepted by the Disciplinary Authority, 'charge proved' is without support of any evidence.

52. There is no argument on any procedural defect in holding enquiry or in passing the order of penalty, except the submissions as noted above.

53. Even before the APAT the petitioner did not allege any procedural defect in issuing the charge memo and in conducting enquiry and thereafter. It is apt to refer Para-2 of the judgment of the APAT, from which it is clear that the applicant did not allege any procedural defects in issuing the charge memo and in conducting enquiry and thereafter.

54. Para-2 of the judgment of Tribunal reads as under:

> "In this Original Application, the applicant did not allege any procedural defects in issuing the charge memo and in conducting enquiry and thereafter. It is contended by the applicant's counsel that conclusion arrived at by the Enquiry Officer is not correct and that in any event the punishment of removal is highly disproportionate."

55. The Enquiry Officer's report shows that the enquiry was conducted without any procedural defects. On behalf of the employer, 6 (six) witnesses were examined, including the complainant. The petitioner cross-examined those witnesses. He produced defence witnesses 4 (four) in number. After evidence, he submitted his final defence statement. The petitioner has also not disputed the aforesaid.

56. The Enquiry Officer, on analysis and assessment of the evidence on record, reached to the following conclusions in para-7 and held in para-8 that the charge was proved against the petitioner.

"**7. CONCLUSION**:

I have gone through the allegation framed against Sri C. Govinda Rajulum,Jr.Asst in the article of charge and after conducting oral enquiry according to the Rule-20 of A.P.Civil Service Rules-1991 and after careful consideration of the statements of Prosecution Witnesses and statement of defence and prosecution exhibits, I have come to the following conclusion.

1. Sri C. Govinda Rajulu, Charged Officer has tried to influence the complainant with negative thoughts / mala fide intention.
2. **Prosecution witness – 03 & 04 are the eyewitnesses for the case and it is a clear cut evidence. The prosecution witness – 06, the administrative officer heard the heated discussion in the A Section and had gone to A Section and warned the charged officer.**

3. In the earlier senior office staff colleagues have given their suggestions / counseling to the charged officer to change his negative behavior and made their efforts to change the attitude and behavior of the charged officer and to create a congenial atmosphere in the office, but all their efforts were in vain.
4. The complainant did not properly reveal, it may be due to the fear of discrimination, feelings of helplessness or feelings of dependency and also social factors and might be afraid to narrate the entire episode as stated in the preliminary enquiry.
5. **The charged officer called her or disturbing her and tried to make a contact with his hand to her body. She tolerated the negative critics with highest level of patience and as the critics were intense then only she came for complaint.**
6. **The charged officer has followed her, seated by the side of her and caught hold her hand with mala fide intention, behaved in a most indecent manner and directed her that she should not talk with others and there by created nuisance in the office which is highly reprehensible.**"

8. FINDINGS:- On the basis of documentary and oral evidence adduced in the case before me and in views of the reasons given above, I hold that the charge is **"PROVED"** against Sri C. Govinda Rajulu, Jr. Asst. of 2nd Bn APSP, Kurnool."

57. The enquiry was thus conducted in accordance with the procedure prescribed in Rules 1991 and in consonance with the principles of natural justice. The Enquiry Officer discussed and analyzed the evidence on record. From the 'conclusions' as quoted above, it is evident that the Enquiry Officer held that the evidence of PW 3 & PW 4 are the eyewitnesses for the case and it is a clear cut evidence. Thus we find that the finding is based on consideration of evidence of the witnesses including of the complainant. There is material to support the finding.

58. After the enquiry report, the petitioner was served with the enquiry officer' report to which he filed the reply. Thereafter, the disciplinary authority imposed the punishment of removal from service.

59. Any prejudice to the petitioner by holding the enquiry by the enquiry officer, appointed, is neither pleaded nor argued.

60. The petitioner, as such, (a) not having raised any plea 'of enquiry not by the Complaints Committee' at any stage of the proceedings, from the stage of the appointment of the enquiry officer till the dismissal of his departmental appeal, (b) not having been able to show any non-compliance with the procedural requirements or with the principles of natural justice, or (c) any prejudice caused; he cannot be permitted to take the plea, based on Rule-3D of the CCA (Conduct) Rules, that the enquiry ought to have been conducted by the Complaints Committee at this stage, particularly when such plea was also not pressed before the APAT, and not even raised in the pleadings or grounds in the present writ petition.

61. So far as the judgment in the case of ***Roop Singh Negi v. Punjab National Bank***[8] is concerned upon which reliance is placed by the learned counsel for the petitioner, there is no dispute on the proposition of law laid down, but in the present case, the finding of the enquiry officer is based on evidence on record. It cannot be said that the findings are based on conjunctures, surmises or on extraneous material or on no evidence.

[8] (2009) 2 SCC 570

62. In ***Pravin Kumar*** (supra), upon which learned GP placed reliance, the Hon'ble Apex Court referred to a three-Judge Bench of the Apex Court in ***B.C.Chaturvedi v. Union of India***[9]***,*** on the point as to when the finding/conclusions of the disciplinary authority are open to judicial review.

63. It is apt to refer para-26 in ***Pravin Kumar*** (supra) as under:

> "**26.** These principles are succinctly elucidated by a three-Judge Bench of this Court in *B.C. Chaturvedi* v. *Union of India* [*B.C. Chaturvedi* v. *Union of India*, (1995) 6 SCC 749, para 12 : 1996 SCC (L&S) 80] in the following extract: (SCC pp. 759-60, paras 12-13)
>
> "*12*. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal concerned is to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. **Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence.** The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with

[9] (1995) 6 SCC 749

the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India* v. *H.C. Goel* [*Union of India* v. *H.C. Goel*, (1964) 4 SCR 718 : AIR 1964 SC 364] this Court held at SCR pp. 728-29 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

64. In ***Pravin Kumar*** (supra) on the point of judicial review in service matters, the Hon'ble Apex Court held that the judicial review is an evaluation of the decision making process, and not the merits of the decision itself. Judicial review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest errors of law or procedure, which might result in significant injustice, or in case of bias or gross unreasonableness of outcome. It was further held that the Constitutional Courts while exercising their powers of judicial review would not assume the role of an appellate authority. Their jurisdiction is circumscribed by limits of correcting errors of law, procedural errors leading to manifest injustice or violation of principles of

natural justice, which we find are not present to invoke the power of judicial review.

65 On point 'B' We hold that the report of the Enquiry Officer as accepted by the Disciplinary Authority that the charge is proved is based on evidence on record of enquiry. It is supported by evidence.

Consideration of Point-C:

66. The charges are serious in nature. The petitioner committed misconduct. Violated ***Vishaka Guidelines*** (supra). The proved act of the petitioner is against the gender equality which includes the protection from sexual harassment and right to work with dignity which is universally recognized as basic human rights. Women have fundamental right to carry on any occupation or trade and this to be effective, there should be safe working environment. Right to life means life to live with dignity which is a fundamental right under Article 21 of the Constitution of India.

67. The petitioner in his service of 18 years, was awarded six punishments for various misconduct and utterly failed to change his attitude, as per the 2nd charge which was also proved in enquiry.

68. The imposition of the penalty of removal from service under the circumstances cannot be said to be disproportionate to the charges proved.

69. The disciplinary authority while imposing the punishment of removal, observed that though it is a fit case for dismissal from service, but taking a lenient view the penalty of removal is imposed.

70. The disciplinary authority has already shown leniency in imposing punishment, though in our view, in such matters, such leniency ought not to have been shown.

71. Recently, in ***Union of india v. Sunil Kumar***[10] the Hon'ble Apex Court has reiterated that punishment should not be merely disproportionate, but should be shockingly disproportionate. It was further reiterated that only in extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution of India.

72. It is apt to refer para-11 in ***Sunil Kumar*** (supra) as under:

> "**11.** Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In *Surinder Kumar* [*CRPF* v. *Surinder Kumar*, (2011) 10 SCC 244 : (2012) 1 SCC (L&S) 398] while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in ***Union of India* v. *R.K. Sharma*** **[*Union of India* v. *R.K. Sharma*, (2001) 9 SCC 592 : 2002 SCC (Cri) 767] that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution**."

73. We are satisfied that the punishment imposed is not disproportionate, much less shockingly disproportionate, and does not touch our conscious, so as to impose a lesser punishment.

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[10] (2023) 3 SCC 622

74. On point-C, we hold that the punishment of removal as imposed is not disproportionate to the proved charges and calls for no interference.

75. In view of the above discussion, there is no need or occasion to consider the alternative argument and the judgment in support of such argument as raised by the learned GP in ***Inspector of Panchayats and District Collector Salem*** (supra) and ***A. Masilamani*** (supra).

76. In the result, the Writ Petition is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Dr. K. MANMADHA RAO, J

Date: 04.08.2023
Dsr

Note:
LR copy to be marked
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