

GOVERNMENT OF TAMIL NADU

Letter No. 96483/N/92-7
Personnel and Administrative
Reforms (N) Department,
Secretariat, Madras - 600 009.

Dated : 6.2.1995.

From

Tmt. Latika D. Padalkar, I.A.S.
Secretary to Government (Training)

To

All Secretaries to Government,
All Heads of Departments,
The Commissioners for Disciplinary
Proceedings, Madras, Madurai and Coimbatore,
The Deputy Commissioner of Disciplinary
Proceedings, Madras - 600108.

Sir,

Sub : Departmental disciplinary enquires (including enquires arising from reports of Director of Vigilance and Anti-Corruption in Vigilance cases) - Standard of proof - PREPONDERANCE OF PROBABILITY alone to be followed.

Ref : From the D.V.A.C. Lr. No.DE/188/85/Pol/CB, dated 7.3.1992.

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In the Hand Book on disciplinary procedures 1987, it has already been indicated as follows (in para -6 on Page - 42):

"However, it may be pointed out that unlike criminal proceedings, the standard of proof in departmental inquiries has been held to be "preponderance of probability" and not proof beyond reasonable doubt"

Yet, it has been brought to the notice of Government that in some cases the Heads of Department and other Disciplinary authorities (and in a few cases even the Commissioners for Disciplinary Proceedings) have in the enquiries conducted by them not adhered to the principle of proof by "PREPONDERANCE

OF PROBABILITY' but gone erroneously by the principle of "proof beyond reasonable doubt". In view of this, it has been considered desirable to impress on all concerned once again the necessity to go only by the principle of "proof by preponderance of probability" in all disciplinary cases - including cases arising out of enquiries conducted by the Directorate of Vigilance and Anti Corruption.

2. In this connection extracts of certain relevant judgements are set out below for information.

The Supreme Court in Union of India versus SARDAR BAHADUR (SLR 1972 P.355) has held as follows:-

"A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt".

The Supreme Court in STATE OF ANDHRA PRADESH versus C.Venkata Rao AIR 1975 (SC 2151) has held as follows :-

"The scope of Art.226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of Andhra Pradesh V.S. Sree Rama Rao. Air 1963 SC 1723. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the court must be applied. If that rule be not applied by a domestic Tribunal of enquiry, The High Court in a petition under Art.226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a Court of appeal under Art.226 over the decision of the authorities holding a departmental enquiry against a public servant. The court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. Second where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent Officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings

against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing by themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is also wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole Judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for Writ under Art. 226".

The Supreme Court in **STATE OF HARYANA versus RATTAN SINGH** (AIR 77 SC 1512) has held as follows:-

"It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Evident Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility".

In **J.D.Jain V. the Management of the State Bank of India** (AIR 1982 SC 673) the Supreme Court has held that for the purpose of a departmental enquiry, complaint, certainly not frivolous, but substantiated by circumstantial evidence, is enough.

The Madras High Court in **JARRING MERCURY versus THE SUPERINTENDENT OF POLICE, COIMBATORE URBAN** (1990 Writ Law Report 109) has held as follows:-

"It is settled Law that disciplinary proceeding is not a criminal trial, and the standard of proof required in the disciplinary proceeding is preponderance of probabilities and not proof beyond all reasonable doubt as is required in a criminal trial. Where, therefore, there are relevant materials which can reasonably support that the delinquent employees is guilty of the charges framed against him and those materials have been accepted by the competent authority, it is not the function of the High Court in exercise of its Jurisdiction under Art. 226 of the Constitution to review the materials and re appraise or re-assess the evidence".

3. All disciplinary authorities may be suitably instructed to keep in view the above principles and strictly adhere to the principle of 'PREPONDERANCE OF PROBABILITY' in Departmental disciplinary proceedings (including such proceedings arising out of vigilance cases).

Yours faithfully,
for Secretary to Government.