



WP No.37209 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

WP No.37209 of 2016

Mr. K.Sasikumar

... Petitioner

-Vs-

1. The Principal Secretary to Government
Home (Police V) Department,
The Secretariat, Chennai - 600 009.

2. The Additional Commissioner of Police
Traffic Vapery, Chennai - 600 007.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records and quashing the proceedings dated 29.06.2016 vide G.O.(2D) No.348 Home (Police V) Department of the first respondent, which was served on the petitioner on 21.09.16, rejecting the mercy petition dated 25.07.2011 of the petitioner by way of confirming 1st respondent's original order dated 07.01.2004 vide G.O.(2D) 11 (Police V) Department imposed on the petitioner awarding the punishment of stoppage of increment for a period of



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3 years with cumulative effect and consequently direct the first respondent to grant continuity of service to the petitioner with all attendant benefits within time frame.

For Petitioner : Mr. K.Ravi Anantha Padmanaban
Senior Counsel

For Respondents : Mr. S.Ravi Kumar
Special Government Pleader

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records of the proceedings dated 29.06.2016 in G.O.(2D) No.348 Home (Police V) Department of the first respondent/ the Principal Secretary to Government, Home (Police V) Department, the Secretariat, Chennai - 600 009, by which the mercy petition dated 25.07.2011 given by the petitioner was rejected and by which the original order dated 07.01.2004 in G.O.(2D) 11 (Police V) Department was confirmed. By the said Original Order, the petitioner was imposed with a punishment of stoppage of increment for a period of 3 years with cumulative effect. The petitioner seeks grant of continuity of service with all attendant



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benefits.

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2. The petitioner was working as Head Constable Grade-I Police at the time when he filed the Writ Petition. He was previously Constable at CBCID Wind in Chennai. In October 1997, the petitioner had been posted as "waiting duty for S.P. CBCID. On 09.10.1997, the DSP, CBCID Counterfeit Preventive Wing and a team went to nab culprits involved in counterfeit currency.

3. It is the claim of the petitioner that he stayed at CBCID Office. On 10.10.1997 in the early morning, the DSP, CBCID called the petitioner to accompany the team of Kundrathur. The petitioner went to Kundrathur Police Station. He was not aware of any details about the raid. On 10.10.1997, the Inspector of Kundrathur Police Station with the CBCID team caught hold of a few persons and brought him to Kundrathur Police station. Thereafter, they were brought to CBCID office and the petitioner also came back with the team. One of the accused was Sukumaran, who was a dismissed Constable.



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4. The petitioner claims that after coming back to the CBCID Office, he went to perform his regular work as "waiting" staff of S.P. He claims that he was not aware of any subsequent event.

5. The subsequent event was that on 11.10.1997 at around 03.30 a.m., the said accused Sukumaran stated that he had breathing problems and he was taken to a hospital and it was advised that he should be shifted to Apollo Hospital but on the way, he died.

6. The petitioner claims that the postmortem report returned a finding that he died due to respiratory problem. It is stated that along with the DSP, two Inspectors, for other Grade-II Constables and the petitioner all faced disciplinary proceedings. The Enquiry Officer awarded postponement of increment for a period of one year with two cumulative effects for DSP. For the two Inspectors, who had by then retired from service, the recovery of Rs.500/- and Rs.300/- from their pension for a period of three years and two years respectively was imposed. For all the Constables including the



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petitioner, the punishment imposed was postponement of increment for a period of three years with cumulative effect.

7. The petitioner claims that the accused Sukumaran died when he tried to escape while being arrest at around 09.30 to 10.00 a.m., on 10.10.1997. It is also the contention of the learned Senior Counsel for the petitioner that evidence revealed that the accused tried to run when he was to be arrested and when the police party, which did not include the petitioner, tried to catch him, he fell down. It is stated that most of the injuries were sustained consequent to such falling down by the accused. However, all the Constables including the petitioner were inflicted with punishments which were far more serious than that imposed on either the DSP or on the two Inspector of Police. This punishment was subsequently questioned by the petitioner by filing an Appeal and also by filing a Review but his efforts to reduce the punishment failed and the Appeal and Review were rejected. Therefore, the petitioner had filed the present Writ Petition.

8. The main contention of the learned Senior Counsel on behalf of



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the petitioner was that the petitioner was only a waiting party and remained at the CBCID Office and remained at Kundrathur Police Station and did not accompany the team which actually went to arrest the said accused Sukumaran. He was always waiting at Kundrathur Police Station and later came back to the CBCID Office and later went over to perform his duty as “waiting” staff for the S.P. The learned Senior Counsel stated that therefore, by no stretch of imagination, could a finding be given that, even if the accused is said to have died owing to force used by the police, the petitioner was party to such infliction of force. He was never present when the accused was arrested. He was never present when such force was used at the time of arrest. He was not present when the accused tried to run and fell down. Thereafter, he had come back along with the team to the CBCID Office and had moved over to the S.P. Office to do his job as “waiting” staff. It is therefore contended by the learned Senior Counsel that there is no finding at all that the petitioner was either directly or indirectly involved in the incidents which led to the death of the accused Sukumaran.

9. The second aspect which is pointed out by the learned Senior



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Counsel is about the parity in punishment. It is the contention of the learned Senior Counsel that the DSP, who was the Investigating Officer and head of the Team was awarded with a punishment of postponement of increment of one year with cumulative effect and the two Inspectors, who were seniors in rank to that of the petitioner, were imposed with punishment of deduction of Rs.500/- and Rs.300/- respectively from their pension for a period of three years and two years and those who went with the party to actually arrest the accused and also the petitioner and also another Constable, Thangaraj were all inflicted with punishment of postponement of increment for a period of three years with cumulative effect.

10. The learned Senior Counsel pointed out the discrimination in the punishment and stated that the petitioner herein, who had not been involved either in the arrest or in the taking of custody of the accused Sukumaran could not and should not have been equated with the roll played by the other Police Personnel and therefore, his case should have been viewed differently and the said punishment should not have been inflicted



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even at par with the other Constables/Head Constable. It was also contended that the DSP and the two Inspectors were given comparatively and extremely minor punishments.

11. The learned Senior Counsel further pointed out the postmortem report by Dr. Santhakumar and pointed out the opinion of Doctor, who stated that the injuries sustained could have been caused 12 to 24 hours prior to the time of death. The accused Sukumaran died early in the morning on 11.10.1997 and if that period is taken into consideration, the injury could have been sustained only around 09.30 to 10.00 a.m., on 10.10.1997 which was the time which he was apprehended and when minimum force was used since he resisted arrest and tried to escape from the police party and fell down. It is therefore contended that the petitioner, who was only waiting at Kundrathur Police Station and subsequently, came back to CBCID Office and went over to perform his job as “waiting” staff for S.P., could never have been involved, if at all it is said that the accused died of police beating.

12. The learned Senior Counsel also pointed out the opinion of the



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Doctor that the injuries could have occurred by falling down and also pointed out that therefore, the assertion by the respondents that the injuries were caused owing to force being used should not be accepted by this Court. The learned Senior Counsel therefore stated that the punishment imposed on the petitioner requires interference by this Court.

13. The learned Special Government Pleader on the other hand justified the order of punishment and the nature of punishment imposed. It is the contention of the learned Special Government Pleader that the fact that the accused Sukumaran died owing to beating by the police had been established and in this connection, the learned Special Government Pleader also relied on the postmortem report which had listed out a series of injuries including contusion injuries and cut injuries. Even if it is to be stated that cut injuries were sustained owing to fall down on rough surface, the contusion could have been injuries caused according to the learned Special Government Pleader, only due to beating by a blunt object. The opinion of the postmortem Doctor was that those injuries were grave in nature and ultimately, those are the reasons for the death of the accused.



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14. The learned Special Government Pleader also pointed out that the role of the petitioner had been established during the enquiry and therefore contended that the other Constables were also given the same punishment, and urged that this Court should not interfere with the quantum of punishment. It is therefore insisted that the Writ Petition should be dismissed.

15. I have carefully considered the arguments advanced.

16. The following facts are neither disputed nor denied:-

(i) The petitioner was working as Constable in the Office of CBCID, counterfeit Wing;

(ii) He was also placed as “waiting” staff in the Office of S.P.;

(iii) On 09.10.1997 he was in the office of CBCID Counterfeit wing;



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(iv) In the early morning of 10.10.1997 he had accompanied the DSP, CBCID to Kundrathur and went to Kundrathur Police Station;

(v) He remained at Kundrathur Police Station;

(vi) The other team led by DSP and Inspectors had gone over to arrest a few accused including one Sukumaran;

(vii) They brought back the said Sukumaran to the police station;

(viii) The petitioner accompanied the team back to the Office of CBCID; and

(ix) The petitioner then went to perform his work as waiting staff for S.P.

17. These are outline facts.

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18. What has to be considered is the happenings, not only at the time of arrest but also at the time when Sukumaran was brought back to the Office of the CBCID.

19. Though the learned Senior Counsel for the petitioner had placed reliance on the postmortem report, to a little extent let me also extract the same from the enquiry report only with respect to the nature of injuries suffered and the injuries which were the cause for death:-

சுகுமாரின் உடலில் காணப்பட்ட 1,2,3
ஆகியவைகள் சிராய்ப்புக் காயங்கள்
என்றும் அவைகள் கரடுமுரடான பரப்பளவு
உள்ள தரையின் மீது விழுந்தாலோ
அல்லது கரடுமுரடான பரப்பளவு
உள்ளவைகளின் மீது உராய்வதாலோ
அல்லது கரடுமுரடான பரப்பளவு உள்ள
ஆயுதங்களினால் தாக்கப்படுவதாலோ
ஏற்பட்டிருக்கலாம் என்றும் காயம் 3
சிராய்ப்பு காயம் நீண்ட ஒழுங்கான



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அளவுள்ள சொரசொரப்பான மேற்பரப்புக்
கொண்ட ஆயுதத்தினால்
தாக்கப்படுவதாலோ அல்லது இத்தகைய
ஆயுதத்தின் மீது வேகமாக விழுவதாலோ
ஏற்பட வாய்ப்புண்டு என்றும் காயங்கள்
4,5,6,7,8,9 ஆகியவை கன்றிய காயங்கள்
இவை மழுமழுப்பான பரப்புள்ள
ஆயுதத்தினால் தாக்கப்பட்டாலோ அல்லது
ஆயுதத்தின் மீது வேகமாக மோதுவதாலோ
ஏற்பட வாய்ப்புண்டு என்றும் காயங்கள்
10,11,12 தலை தோளின் உட்பாகத்தில்
இருந்த கன்றிய காயங்கள் உட்கூறாய்வின்
போது காணப்பட்ட காயங்கள் என்றும்
இவைகள் மரணம் ஏற்படுத்தும் காயங்கள்
என்றும் இந்த காயங்கள் மழுமழுப்பான
பரப்பளவுள்ள தரைகள் மீது விழுந்தால்
ஏற்பட வாய்ப்புண்டு பிரம்பு கத்தி போன்ற
மழுமழுப்பான ஆயுதங்களால்
தாக்கப்பட்டால் மேல் பாகத்தில் தோலில்
சிதைந்த காயங்கள் ஏற்பட்டிருக்கும் என்று
மேற்படி காயங்கள் சமதள மழுமழுப்பான
பரப்பின் மீது விழுவதாலோ,
மோதுவதாலோ ஏற்பட்டிருக்க வாய்ப்புகள்
அதிகம் என்றும் இந்த காயங்கள் கடுமார்



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இறப்பதற்கு முன் 12 லிருந்து 24 மணிக்குள் ஏற்பட்டு இருக்கலாம் என்று கூறியுள்ளார். இத்தகை காயங்கள் ஏற்பட்டவர் சில மணி நேரங்கள் முதல் ஓரிரு நாட்கள் வரை உயிருடன் இருக்கலாம் என்றும் நடக்கவோ, பேசவோ வாய்ப்பு என்றும் மூளையில் ஏற்படும் இரத்தக் கசிவும் அதிகமாக அதிகமாக காயமுற்றவர் செயல்களில் தடுமாற்றமும், சுவாசிப்பதில் சிரமமும், பின்பு மயக்கமும், மரணமும் ஏற்பட வாய்ப்புண்டு என்றும், கயநினைவில்லாமல் பல நாட்கள் இருக்கவும் வாய்ப்பு உண்டு என்று கூறியுள்ளார்.

20. The above extract clearly shows that there were several injuries including cut injuries and contusion injuries found during the course of postmortem. It had been very clearly stated that though there was a possibility of those injuries being sustained when a person falls down, the more probability is that they occurred when the person was beaten with sharp objects and by a blunt instrument. It had been stated that these injuries could have been sustained about 30 – 36 hours prior to the time of



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death. This is only an opinion. The fact is that the injuries have been sustained. The fact is that those injuries also included contusion injuries. It is also a fact that the petitioner was part of a larger team and whether he actually accompanied at the time of arrest or not pales into insignificance because Sukumaran was brought back to the CBCID Office.

21. Judicial Review would lie on the procedure adopted by the Enquiry Officer. Arguments were not advanced about lack of opportunity granted during the enquiry process. The main focus of the argument was the overt act which could be attributed to the petitioner herein and to the proportion of punishment compared with the punishment imposed on the DSP and the Inspectors of Police.

22. That issue had actually been taken up in *W.P.Nos. 26611 to 26613 and 26952 of 2007 [M.Vijayan and three others Vs. the Secretary to Government, Home (Police II) Department, Chennai]*. Those writ petitions filed by the other Constables.



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23. The learned Senior Counsel stated that those writ petitions should have been divided in to two categories, one filed by the first three petitioners therein and the other by the fourth petitioners / A.Thangaraj. This is because Thangaraj was also waiting in CBCID Office like the petitioner herein. The argument advanced is that the petitioner, who was waiting in the CBCID Office after the accused Sukumaran was brought back and had not been involved in that arrest could not therefore be involved in the causing of injuries. It is contended that Thangaraj also stood on the same footing. He was also waiting in the Office of CBCID, after the accused Sukumaran was brought back.

24. The learned Single Judge, who heard those four writ petitions together however refused to interfere with the quantum of punishment imposed, namely, postponement of increment for three years with cumulative effect. With respect to the proportionality of punishment, the arguments on that ground advanced by the learned Senior Counsel in those Writ Petitions were brushed aside in the following manner by the learned



“23. Further the contention of the learned Senior Counsel about the proportionality of punishment is also not tenable. The punishment imposed on the petitioners is only a minor punishment.”

25. The one primary ground on which those writ petitions were filed was on the issue of delay. That issue has not been addressed in the present Writ Petition. The issue of delay had been however answered against the writ petitioners therein.

26. As against that Judgment of the learned Single Judge, the petitioners therein had filed W.A.Nos. 518 to 521 of 2012. Even though the learned Senior Counsel in the present Writ Petition stated the case of Thangaraj should have been examined separately, it is seen that he had taken a conscious decision that his Writ Petition and his Writ Appeal were heard along with the Writ Petitions and the Writ Appeals filed by the other



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Constables, he had also filed a Writ Appeal along with the other writ petitioners. The Writ Appeals came up for consideration before a Division Bench and by a Judgment dated 12.12.2017, the Writ Appeals had been dismissed.

27. In the Writ Appeals, the main ground argued was about the proportionality of punishment. The Division Bench had held as follows:-

“6. The punishment imposed on the appellants was assailed by them on the ground that the said punishment is too harsh and that there was no uniformity in the imposition of punishment.

7. Admittedly, the team which arrested the accused was led by the Inspectors of Police and based on the enquiry report submitted by the P.A. to the Collector, only the Deputy Superintendent of Police and the Inspectors were suspended immediately. Thereafter, based on the additional statement made by the wife of the accused, the appellants were implicated, though she had earlier stated that her husband was not tortured by the



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police officials during the custody. But, according to the appellants, the Inspectors were the authority, under whose directions, they acted and therefore, there being no vital role on their part, in the death of the accused, they should have been given lesser punishment than the one imposed on them and that imposition of lesser punishment on the Inspector of Police is arbitrary. 8. It is, therefore, necessary to have a look at the punishment imposed on the appellants and others. Accordingly, it is extracted as under:

Sl.No.	Name of the delinquent and PR No.	Nature of punishment awarded
1.	Thiru N.Kuppusamy Superintendent of Police PR No.7/99	Stoppage of increment for one year with cumulative effect - G.O.(2D) No.499, Home (Pol.2) Department dated 28.9.2004
2.	Thiru E.A.K.Sivaraman Deputy Superintendent of Police formerly Inspector PR No.8/99	Pension cut of Rs.500/- p.m. for 3 years
3.	Thiru S.Packiyaraj Inspector of Police PR No.9/99	Orders not yet issued



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Sl.No.	Name of the delinquent and PR No.	Nature of punishment awarded
4.	Thiru K.Sasikumar Police Constable 11326	PR No.10 to 15/99. Stoppage of increment for 3 years with cumulative effect vide G.O.(2D) No.6 to 11, Home (Pol. 2) Department, dated 07.01.2004 9.
5.	Thiru A.Thangaraj, Grade I Police Constable 2045	
6.	Thiru S.Mathaiyan Grade I Police Constable 6509	
7.	Thiru D.Mohan Temporary SI, formerly HC 2083	
8.	Thiru E.Sivaji Grade I Police Constable 10110	
9.	Thiru M.Vijayan Head Constable 12232	

9. A perusal of the above and also the enquiry report, it appears that the appellants and others have been found guilty. However, only after taking note of their involvement, different punishments had been imposed on the appellants and others. Though the appellants contend that they acted only on the direction of the Inspector and therefore, the punishment imposed on them has to be modified by imposing lesser punishment like that of the one imposed on the Inspector, we are of the considered view



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that such imposition of punishment by the disciplinary authority, having regard to the nature of the overt act and also the post mortem report, does not inspire the confidence of this Court to propose any other lesser punishment.

10. In view of the above, these appeals are dismissed. However, there shall be no order as to costs. ”

28. The learned Senior Counsel, placing reliance on the Judgment of the Division Bench had stated that the Division Bench stated that they had taken a considered view about the imposition of punishment by the disciplinary authority, having regard to the nature of the overt act and also the postmortem report and thereafter stated that those aspects did not inspiring confidence on the Court to impose lesser punishment so far as the appellants were concerned. This aspect is relied on by the learned Senior Counsel by stating that therefore, the overt act of the petitioner should be independently examined by this Court. The overt act of the petitioner herein is similar to that of Thangaraj / Constable.



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29. The case of Thangaraj was also examined by the Division Bench. Even if the Division Bench had passed one common order in the four Writ Appeals, it has to be held that each one of the writ appeals had been independently considered and thereafter, a common order was passed. Merely because one common order was passed would not mean that the cases were not examined independently. It would not lie in the mouth of the writ petitioner to contend so. The aspect of overt act had been examined and the Division Bench had very clearly stated that the report of the postmortem and the overt act do not inspire confidence of the Division Bench to impose any lesser punishment. This is a very categorical finding given by the Division Bench. They had examined the overt act and they had done independently examined each one of the Writ Appeals. It has to be stated that they had applied the mind with respect to the arguments advanced on all aspects.

30. The Division Bench had held that *“only after taking note of the involvement, the different punishments have been imposed on the*



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appellants and others”. Therefore, the Division Bench had consciously retained the punishment imposed.

31. In view of the observations which directly applies to the petitioner herein, I am afraid, I cannot interfere with the punishment imposed and therefore, the Writ Petition stands dismissed. No costs.

32. The learned Senior Counsel for the petitioner then stated that even though the petitioner had suffered an order of punishment in the departmental proceedings, it should be taken that the punishment related back to the date of delinquency. To a little extent that contention is correct.

33. I would therefore, observe that if the petitioner is entitled for promotion in the normal course and if he is otherwise eligible and if there are no other remarks against him, then the petitioner may be considered for promotion in accordance with the Rules governing grant for promotion. No further observations are required. The Writ Petition stands dismissed. No costs.



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