



W.P.(MD) No.18196 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 18.03.2024

ORDERS PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.18196 of 2020

and

W.M.P.(MD) No.15179 of 2020

M.Thirumeni

... Petitioner

Vs.

- 1.The Additional Chief Secretary to Government,
Home (Pol.VI) Department,
Secretariat, Chennai-9.
- 2.The Principal Secretary to Government,
Home (Pol.VI) Department,
Secretariat, Chennai-9.
- 3.The Director General of Police,
Tamil Nadu, Chennai-600 004.
- 4.The Deputy Inspector General of Police,
Trichy Range, Trichy,
(i/c) Thanjavur Range,
Thanjavur.



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5. The Superintendent of Police,
District Police Office,
Thanjavur.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus to call for the records pertaining to the order of the fifth respondent herein in his PR.No.26/2007 u/r 3(b) dated 10.09.2013 and the consequential order passed by the fifth respondent herein in his D.O.1065/2013, R.C.No.K1/PR.26/2007 dated 10.09.2013 imposing a punishment of dismissal from service and the consequential order passed by the fourth respondent herein in his Na.Ka.No.B2/AP.34/13 dated 07.11.2013 rejecting the appeal petition and the further consequential order passed by the third respondent herein in his Rc.No. 047523/API(1)/2014 dated 11.05.2016 rejecting the review petition and further consequential order passed by the second respondent herein in G.O. (D) No.394, Home (Pol.VI) Department, dated 28.03.2017 and the order passed by the first respondent herein in Letter No.13411/Pol.VI/2019-1 dated 01.10.2019, quash the same and consequently direct the respondents herein to permit the petitioner to retire from service with effect from 30.06.2013 with all retirement and consequential monetary benefits.

For Petitioner : Mr.Issac Mohanlala
Senior Counsel
assisted by
Mr.S.Venkatesan



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For Respondents : Mr.N.Ga.Natraj
Government Advocate

ORDER

1.1. The petitioner was initially appointed as Grade-II Police Constable in the year 1976 and then he was promoted to the post of Grade-I Police Constable in the year 1982. He was further promoted to the post of Head Constable in the year 1991. While so, disciplinary proceedings were initiated against the petitioner by issuing a charge memo dated 01.04.2007 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 (hereinafter referred to as “the Rules”) containing a solitary charge. The said charge reads as under:

“பட்டுக்கோட்டை காவல் நிலையத்தில் பணிபுரிந்த பிழையாளர் 09.01.2006 அன்று 20.30 மணிக்கு பட்டுக்கோட்டை காவல் நிலையத்திலிருந்து பெருமாள் கோவில் வைகுண்ட ஏகாதசி திருவிழா பாதுகாப்பு ரோந்து பணிக்கு அனுப்பப்பட்டவர் குடிபோதையில் அங்கிருந்த பொதுமக்கள் மற்றும் சக ரோந்து தலைமை காவலர் த.கா.2024 கோவிந்தராஜ் ஆகியோரிடம் தகராறு செய்தும் காமக்குரோதமாக பேசியும் மற்றும் சிறப்பு உதவி ஆய்வாளர் திரு.குப்புசாமி என்பவர் சொல்லியும் கேளாமல் வீண் தகராறு செய்தும் இதுதொடர்பாக



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பட்டுக்கோட்டை காவல் நிலைய கு.எண்.28/06 U/S 294(b), 353 IPC r/w 4(J)(ii) TNP Act படி 13.01.2006 தேதி 15.00 மணிக்கு வழக்கு பதிவு செய்யுமளவிற்கு நடந்துகொண்ட பிழையாளரின் செய்கை பணியில் பொறுப்பற்ற தன்மையுடனும், அலட்சியப்போக்குடனும், கடமையிலிருந்து தவறிய செயல் ஆகும்.□

1.2. The basis of the charge as contained in Annexure-II of the charge memo reads as under:

“பட்டுக்கோட்டை காவல் நிலையத்தில் பணிபுரிந்த பிழையாளர் 09.01.2006 அன்று 20.30 மணிக்கு பட்டுக்கோட்டை காவல் நிலையத்திலிருந்து பெருமாள் கோவில் வைகுண்ட ஏகாதசி திருவிழா பாதுகாப்பு ரோந்து பணிக்கு அனுப்பப்பட்டவர் குடிபோதையில் அங்கிருந்த பொதுமக்கள் மற்றும் சக ரோந்து தலைமை காவலர் த.கா.2024 கோவிந்தராஜ் ஆகியோரிடம் தகராறு செய்தும் காமக்குரோதமாக பேசியும் மற்றும் சிறப்பு உதவி ஆய்வாளர் திரு.குப்புசாமி என்பவர் சொல்லியும் கேளாமல் வீண் தகராறு செய்தமைக்காக ஆய்வாளர் நிலைய மருத்துவ நமூனா எண்.05.:மருந்து/06 நாள். 10.01.2006-ன்படி உம்மை பட்டுக்கோட்டை அரசு மருத்துவ அதிகாரி அவர்களிடம் ஆஜர் செய்து பரிசோதனை செய்யப்பட்டதில் Class (ii) Consumed



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liquor but is not under its influence என குடிபோதைச்சான்று பெற்றும் பின்னர் ஆய்வாளரிடம் சிறப்பு உதவி ஆய்வாளர் பிழையாளர்மீது நடவடிக்கை எடுக்க வேண்டி தனி அறிக்கை சமர்ப்பித்ததன் பேரில் ஆய்வாளர் 10.01.2006-ம் தேதி பட்டுக்கோட்டை துணைக் கண்காணிப்பாளர் அவர்கள் மூலமாக மாவட்ட காவல் கண்காணிப்பாளர் அவர்களுக்கு பிழையாளர்மீது உரிய துறை நடவடிக்கை எடுக்கவேண்டி அனுப்பி வைத்துள்ளார். அந்த அறிக்கையின்படி வழக்கு பதிவு செய்து மேல்விசாரணை தொடர மாவட்ட காவல் கண்காணிப்பாளர் அவர்கள் 13.01.2006-ம் தேதி அறிவுறுத்தியதன் பேரில் நிலைய குற்ற எண்.28/06 U/S 294(b), 353 IPC r/w 4(J)(ii) TNP Act படி 13.01.2006-ம் தேதி 15.00 மணிக்கு வழக்கு பதிவு செய்யுமளவிற்கு நடந்துகொண்ட மேற்படி பிழையாளரின் செய்கை, பணியில் பொறுப்பற்ற தன்டையுடனும், அலட்சியப்போக்குடனும், கடமையிலிருந்து தவறிய செயல் ஆகும்.□

1.3. Simultaneously, a crime was also registered against the petitioner in Crime No.28 of 2006 for the offence under Sections 294(b) and 353 of IPC read with Section 4(J)(ii) of Tamil Nadu Police Act on 13.01.2006. Thereafter, a charge sheet was filed in the above said crime and



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the same was taken on record as Calender Case No.1470 of 2006 on the file of the Court of the Judicial Magistrate, Pattukottai and after full-fledged trial and on examining eight witnesses, the said calender case was ended in acquittal, honourably acquitting the petitioner of the charges levelled against him by an order dated 13.05.2008. By that date, the disciplinary proceedings initiated against the petitioner were pending. Under those circumstances, the petitioner approached this Court by filing W.P.(MD) No. 4223 of 2008 seeking stay of all further proceedings in the disciplinary proceedings initiated against the petitioner. The said writ petition was disposed of by an order dated 27.03.2013 directing Respondent No.5 herein to take into consideration as to whether the disciplinary proceedings against the petitioner have to be proceeded further in view of acquittal of the petitioner in the criminal case and also further directed to take into consideration that under similar circumstances, another person by name Mathivanan, Head Constable was exonerated from the charges, on acquittal from the criminal case.

1.4. However, thereafter, the disciplinary proceedings continued



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against the petitioner and a report of the Enquiry Officer was submitted on 25.06.2013 while the date of superannuation of the petitioner was 30.06.2013. The petitioner was not allowed to retire from service and subsequently, through proceedings dated 10.09.2013, a punishment of dismissal from service was imposed on the petitioner. Aggrieved by the same, the petitioner filed an appeal before Respondent No.4 herein. But the said appeal was rejected by Respondent No.4 by passing an order in Na.Ka.No.B2/AP.34/13, dated 07.11.2013. Thereafter, the petitioner filed a review petition before Respondent No.3 and a further review petition before Respondent No.2. Both the said review petitions were rejected by passing orders dated 11.05.2016 and 28.03.2017. It is aggrieved by the said orders passed by Respondent No.5, dated 10.09.2013, as confirmed by Respondents No.2 to 4, the petitioner approached this Court by filing the present writ petition.

2. Heard Sri Issac Mohanlal, learned Senior Counsel assisted by Mr.S.Venkatesan, learned counsel for the petitioner and Sri N.Ga.Natraj, learned Government Advocate appearing for the respondents.



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3.1. Learned Senior Counsel appearing for the petitioner contended that the charge levelled against the petitioner, both in the criminal proceedings as well as in the department proceedings, is one and the same and the witnesses that are examined by the learned criminal Court as well as in the departmental enquiry are one and the same. It is further contended that though the learned Magistrate on having appreciating the oral and documentary evidence that is placed before him came to the conclusion that the prosecution failed to prove the charge levelled against the petitioner and in spite of acquitting the petitioner honourably, the Enquiry Officer while conducting enquiry and submitting his report, failed to consider the findings recorded by the learned Magistrate, in spite of bringing the same to the notice of the Enquiry Officer. So also, the disciplinary authority viz., Respondent No.5 and the other appellate and review authority also failed to appreciate the matter in proper perspective as directed by this Court by an order dated 23.07.2013 in W.P.(MD) No.4223 of 2008.

3.2. The learned Senior Counsel also further contended that the



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respondents while imposing the punishment, in an arbitrary manner have taken into consideration the past conduct of the petitioner, though the same is not the subject matter of the present disciplinary proceedings, thereby, they have considered the material which is not put to the petitioner herein and the past conduct appears to have weighed more with the respondents in imposing the punishment of dismissal from service. According to the learned Senior Counsel, the action of the respondent in considering the past conduct of the petitioner without framing any charge in that regard in the present disciplinary proceedings is in violation of the principles of natural justice.

3.3. The learned Senior Counsel also further contended that Respondent No.4-appellate authority while entertaining the appeal filed under Rule 5 of the Rules, failed to consider the said appeal in a proper perspective and not followed the procedure that is provided under Rule 6 of the Rules and dismissed the appeal filed, thereby, caused great prejudice to the petitioner. In other words, it is the contention of the learned Senior Counsel that Respondent No.4-appellate authority has not applied its mind



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to the grounds of appeal that are raised by the petitioner in the appeal, but in a mechanical manner, the appeal was rejected by passing a cryptic order. He also further contended that in view of the fact that the charge that is framed against the petitioner in the departmental proceedings as well as in the criminal proceedings is one and the same including the witnesses that are examined in both the proceedings, it is not open for the respondent-authorities to continue the departmental proceedings and to impose the punishment of dismissal from service, that too, after the petitioner has successfully completed the service of 36 years. In support of the contention that disciplinary proceedings cannot be continued once the criminal proceedings are ended in acquittal basing on the same set of facts and witnesses, learned Senior Counsel relied upon the decisions of the Hon'ble Apex Court in ***Capt.M. Paul Anthony vs. Bharat Gold Mines Ltd. and Another*** reported in ***(1999) 3 SCC 679*** and ***Ram Lal vs. State of Rajasthan and others*** reported in ***(2024) 1 SCC 175***.

3.4. In support of the contention that past conduct cannot be taken into consideration without putting the same and framing appropriate charge



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in that regard in the subsequent disciplinary proceedings, the learned Senior Counsel relied upon the decisions of the Hon'ble Apex Court in ***State of Mysore vs. K.Manche Gowda*** reported in ***AIR 1964 SC 506 (CB)***; ***Mohd. Yunus Khan vs. State of Uttar Pradesh and Others*** reported in ***(2010) 10 SCC 539***; and ***Indu Bhushan Dwivedi vs. State of Jharkhand and Another*** reported in ***(2010) 11 SCC 278***.

3.5. In support of the contention that the appeal filed by the petitioner is also required to be considered by considering all the grounds and then the appellate authority is under obligation to arrive at conclusion, learned Senior Counsel relied upon the decision of the Hon'ble Apex Court in ***Narinder Mohan Arya vs. United India Insurance Co. Ltd. and Others*** reported in ***(2006) 4 SCC 713***; and ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney and Others*** reported in ***(2009) 4 SCC 240***.

4. On the other hand, Sri N.Ga.Natraj, learned Government



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Advocate contended that the respondents have strictly followed the procedure in conducting enquiry against the petitioner and it is only on the Enquiry Officer holding that the charge levelled against the petitioner was proved, Respondent No.5-disciplinary authority has considered the totality of circumstances including the past conduct of the petitioner and rightly imposed the punishment of dismissal from service. He also further contended that the judgment was rendered by the learned Magistrate honourably acquitting the petitioner from the charge under different circumstances and the same is not binding on the respondents. He also further contended that the respondents are entitled to arrive at independent consideration basing the material available before them. Thus, he supported the impugned orders passed by the respondents.

5. This Court carefully considered the submissions made on either side and perused the entire material on record.

6. Before examining the merits of the case, it is necessary to examine the legal position as to the scope of the disciplinary proceeding,



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once the delinquent was acquitted in the criminal case, where the identical charge and identical evidence was considered by the concerned criminal Court. In **Capt.M. Paul Anthony** (*supra*), the Hon'ble Apex Court after having reviewed the entire case law available as on the date, held as under:

“34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, “the raid conducted at the appellant's residence and recovery of incriminating articles therefrom”. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was



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any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the “raid and recovery” at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.”

7. In the case of **Ram Lal** (*supra*), once again the Hon'ble Apex Court considered the same, after framing a specific question as to what is the effect of acquittal ordered by the appellate Judge in the criminal trial on the order of dismissal passed in the departmental enquiry and answered the said question at Paragraph Nos.25 to 30, which read as under:



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“Effect of acquittal in the criminal proceeding
— Question 2

25. With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW 2, PW 3, PW 6, PW 9 and PW 13 respectively at the criminal trial. Apart from them, eight other witnesses were also examined. The gravamen of the charge in the criminal case was that the appellant had submitted an application for recruitment along with his marksheet and he, by making alteration in his date of birth to reflect the same as 24-4-1972 in place of 21-4-1974, and obtained recruitment to the post of Constable.

26. Though the trial court convicted the appellant under Section 420IPC, the appellate court recorded the following crucial findings while acquitting the appellant:

“...Mainly the present case was based on the documents to this effect whether the



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date of birth of accused is 21-4-1972 or 21-4-1974. Ext. P-3 is original marksheet, in which, the date of birth of accused has been shown as 21-4-1972 and same has also been proved by the witnesses examined on behalf of the prosecution. Whatever the documents have been produced before the court regarding the date of birth of 21-4-1974 are either the letters of Principal or are duplicate TC or marksheets. Neither the prosecution has produced any such original documents in the subordinate court to this effect that when the admission form of accused was filled, what date of birth was mentioned by the accused in it, what was the date of birth in Roll Register of School, what date of birth was mentioned by accused in the examination form of Secondary, and nor after bringing the original records from the witnesses concerned, same were got proved in the evidence. In these circumstances, this fact becomes doubtful that date of birth of the accused was 21-4-1974, and the accused is entitled to receive its benefit. In the considered opinion of this Court, the conviction made by the learned subordinate court merely on the basis of oral evidence and letters or duplicate



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documents, is not just and proper. It is justifiable to acquit the accused.

Resultantly, on the basis of aforesaid consideration, the present appeal filed by the appellant-accused is liable to be allowed.”

(emphasis supplied)

27. What is important to notice is that the Appellate Judge has clearly recorded that in the document Ext. P-3 — original marksheet of the 8th standard, the date of birth was clearly shown as 21-4-1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21-4-1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge (see *S. Samuthiram [State of T.N. v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229]*).

28. Expressions like “benefit of doubt” and



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“honourably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Ext. P-3, the original marksheet carries the date of birth as 21-4-1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The Court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

29. We are satisfied that the findings of the Appellate Judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved” — in fact the charge even stood “disproved” by the very prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of



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the particular case, to act upon the supposition that it does not exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved” (see Vijayee Singh v. State of U.P. [Vijayee Singh v. State of U.P., (1990) 3 SCC 190 : 1990 SCC (Cri) 378]).

30. We are additionally satisfied that in the teeth of the finding of the Appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank [G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121].”

8. From the above, it is clear that when in a case, if the charge framed and witnesses examined are also same and a finding is recorded in the criminal proceedings by a Judicial Officer by recording certain findings on factual aspects, the said findings are binding in the departmental



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proceedings. It is also concluded that in case, if the departmental proceedings and the criminal case are the same without there being any iota of difference, the distinction which is usually drawn as between the departmental proceedings and the criminal case on the basis of the approach and burden of proof, would not be applicable. In the light of the above legal position, the case on hand needs to be considered.

9. From the basis of the charge as mentioned in Annexure-II of the charge memo issued in the departmental proceedings, it is evident that an incident occurred on 09.01.2006 at 20.30 hours where the petitioner herein was alleged to have quarrelled with the public and patrolling Constable Mr.Govindaraj in a drunken mode without heeding the words of the Sub Inspector Mr.Kuppusamy. It is also alleged that as per the medical memo dated 10.01.2006, the petitioner was found intoxicated, but not under its influence. Narrating the above said incident, the Sub Inspector submitted a report to the Inspector concerned to take appropriate action and in turn, the said report was submitted to Respondent No.5 herein and on the instructions of Respondent No.5, it was on 13.01.2006, a crime was registered against



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the petitioner in Crime No.28 of 2006. Thus, it is not a case where on a complaint lodged by any of the officers immediately after the incident, the crime was registered, but it is only when a report was submitted departmentally to Respondent No.5 and it is at the instance of Respondent No.5, a criminal case was registered against the petitioner. Thus, it is evident that the basis for registration of crime against the petitioner is the report of the Inspector of Police. As is evident from the basis of the charge, the very same report of the Sub Inspector and the incident that is alleged to have taken place on 09.01.2006 is the basis for initiating disciplinary proceedings against the petitioner. As could be seen from the charge as narrated in Annexure-I of the charge memo, registration of the crime itself is amounting to reckless, negligent and dereliction of duty. Thus, it is evident that the charge memo issued against the petitioner and the crime that was registered against the petitioner are intrinsically connected, rather same.

10. Then from the perusal of the judgment of the learned Magistrate in C.C.No.1470 of 2006, dated 13.05.2008 and the departmental proceedings, including the report of the Enquiry Officer, it is evident that



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the prosecution witnesses 1 to 8 in the criminal proceedings are the witnesses in the departmental proceedings as well, as seen from Annexure-III of the charge memo, report of the Enquiry Officer, compared with the Appendix of evidence in the judgment of the learned Magistrate. In paragraph 10, the learned criminal Court recorded a finding that the investigation had not been properly done and even the medical report do not support the allegation. But in the departmental enquiry, as seen from the report of the Enquiry Officer, the very same witnesses were examined on behalf of the department and one of the witnesses viz., Kuppusamy, who worked as Sub Inspector at the relevant point of time, and whose report is the basis for initiating both disciplinary proceedings as well as criminal proceedings against the petitioner, categorically stated that he was forced to give his statement by the Inspector and also further stated that he came to know about the FIR only when he received summons from the Court. Thus, the basis for initiating the disciplinary proceedings as well as criminal proceedings against the petitioner is the incident that was alleged to have taken place on 09.01.2006.



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11. The charges that are framed against the petitioner under Sections 294(b) and 353 of IPC and Section 4(J)(ii) of the Tamil Nadu Police Act, if read in conjunction with the charge levelled against the petitioner in the departmental proceedings, it is clear that the entire allegation is almost identical. As already discussed above, the witnesses that are examined in the criminal proceedings and the witnesses that are examined in the departmental proceedings are all one and the same. Absolutely, there is no change in the nature of allegation made against the petitioner and the evidence that is adduced before the learned Magistrate and during the departmental proceedings.

12. In the light of the above, if the law laid down by the Hon'ble Apex Court as noted above is applied to the facts of the case on hand, the same would boil down to an inescapable conclusion that the findings that are recorded in the criminal proceedings are binding on the departmental authorities as well as the disciplinary authority. Resultantly, the action of the respondent-authorities in continuing the disciplinary proceedings even after the petitioner was honourably acquitted in respect of the very same



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charge is bound to be declared as arbitrary, illegal and contrary to the law laid down by the Hon'ble Apex Court.

13. Then coming to the contentions raised by the learned Senior Counsel on the ground of taking into consideration the past conduct of the petitioner while imposing the punishment in the disciplinary proceedings without framing any charge in that regard is concerned, the law in this regard is also well settled as held by the Constitution Bench of the Hon'ble Apex Court in the case of **K.Manche Gowda** (*supra*), wherein it was held as under:

“7. Under Article 311(2) of the Constitution, as interpreted by this Court, a government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the government servant must be told of the grounds on which it is proposed to take such action : see the decision of this Court in the State of Assam v. Bimal Kumar Pandit [Civil Appeal No. 882 of 1962



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decided on 12-2-1963] . If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment : he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the government servant. It would be no answer to suggest that every government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that what the government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him



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to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. We cannot accept the doctrine of “presumptive knowledge” or that of “purposeless enquiry”, as their acceptance will be subversive of the principle of “reasonable opportunity”. We, therefore, hold that it is incumbent upon the authority to give the



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government servant at the second stage reasonable opportunity to show-cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.”

14. Yet in another case in **Mohd. Yunus Khan** (*supra*), the Hon'ble Apex Court having taken note of the above judgment of the Constitution Bench, has been pleased to hold as under:

“37. In view of the above, we reach the following inescapable conclusions:

X. The appellate authority could not consider the past conduct of the appellant to justify the order of punishment passed by the disciplinary authority without bringing it to the notice of the appellant.

XII. Past conduct of an employee should not generally be taken into account to substantiate the quantum of punishment without bringing it to the notice of the delinquent employee.”



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15. The law in this aspect is very clear and in case, if any past conduct of the delinquent is intended to be taken into consideration while imposing the punishment in the subsequent disciplinary proceedings, necessarily the delinquent should be put on notice on that and he should be afforded an opportunity to respond to such proposal.

16. In the instant case, as seen from the original order of punishment dated 10.09.2013, Respondent No.5 having accepted the report of the Enquiry Officer, came to the conclusion that charge is proved against the petitioner and proceeded to impose the punishment by observing that in view of the repeated misconducts as well as the other pending charges against the petitioner, the disciplinary authority have no other alternative than coming to the conclusion of imposing the punishment of dismissal from service and accordingly, dismissed the petitioner from service. Thus, it is evident that it is not only the charge that is subject matter of disciplinary proceedings initiated against the petitioner weighed with the disciplinary authority, but the alleged repeated misconducts and other pending charges against him influenced the mind of the disciplinary authority while



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imposing the punishment of dismissal on the petitioner.

17. The language that is used in the impugned order and the tenor with which the same was considered by the disciplinary authority, would clearly show that it is the alleged past repeated misconduct and pending charges against him prompted, rather compelled the disciplinary authority to impose the punishment of dismissal from service. Admittedly, past repeated misconducts is not the allegation or charge framed against the petitioner in the current disciplinary proceedings.

18. Then coming to the pending charges, even if there are any pending charges against the petitioner other than the charges in question, the same can never be the basis in deciding the quantum of punishment in the present disciplinary proceedings. Thus, Respondent No.5 subjected the order of dismissal to illegality in violation of principles of natural justice.

19. Perusal of the order passed by Respondent No.4 and appeal



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filed by the petitioner also would go to show the past record and other conduct of the petitioner, which is not the subject matter of the present disciplinary proceedings weighed with the disciplinary authority in confirming the punishment of dismissal while rejecting the appeal filed by the petitioner. In this regard, the relevant paragraph from the order of the appellate authority need to be noted, which reads as under:

“நான் இந்த தண்டனை பட்டி மற்றும் மேல் முறையீட்டு ஆவணங்களை கவனமுடன் கூர்ந்தாய்வு செய்தேன். தவறுகள் நடந்தால் தண்டனை பெற்று கொடுத்து திருத்தும் பொறுப்புள்ள காவல் துறையில் பணிபுரியும் பிழையாளர் பாதுகாப்பு ரோந்து பணிக்கு செல்லும் போது குடிபோதையில் இருந்து பொதுமக்கள் முன்னிலையில் சக காவலரை அவதூறான வார்த்தைகளால் பேசி வீண் தகராறு செய்து அதனால் வழக்கு பதியுமளவு தன்னிலை மறந்து தான் சார்ந்த துறைக்கு பிழையாளர் மிகுந்த அவப்பெயர் பெற்றுதந்துள்ளார்.□

20. Though, the alleged repeated misconduct and pending charges are stated to be the basis for imposing the major punishment of dismissal from service, no such details are furnished either in the impugned orders or



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filed in the present writ petition. Thus, the impugned orders passed by Respondent No.5 as confirmed by Respondent No.4 imposing the punishment of dismissal from service and confirming the same by considering the factors which are not put forth before the petitioner are liable to be declared as illegal and arbitrary and such punishment imposed in violation of the principles of natural justice.

21. In the light of the conclusions arrived at above, this Court does not deem it necessary to go into the manner in which Respondent No.4 considered the appeal filed by the petitioner and validity of the process of consideration.

22. As already noted above, the petitioner attained the age of superannuation on 30.06.2013 and in all, the petitioner has rendered 36 years and also taking into consideration the delay in concluding the disciplinary proceedings that were initiated in the year 2007 and the fact that under similar circumstance when a similar charge is framed against one Mathivanan, HC 313, who was also acquitted in the criminal case, was



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imposed with the punishment of stoppage of increment and further disciplinary action was dropped, this Court is of the considered view that the respondents ought to have dropped the disciplinary proceedings against the petitioner as well, consequent upon the honourable acquittal of the petitioner in the criminal proceedings.

23. In the light of the above, this Court is of the considered view that the disciplinary proceedings initiated against the petitioner resulting in imposing the punishment of dismissal from service are liable to be quashed and accordingly, the impugned orders passed by the respondents are quashed. The period of suspension shall be treated “leave” for which the petitioner may be entitled to. The respondents are further directed to settle the terminal benefits of the petitioner from the date of superannuation, i.e., 30.06.2013 as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this order.

24. In the result, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.



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26.03.2024

NCC : Yes/No
Index : Yes/No
ABR

To

- 1.The Additional Chief Secretary to Government,
Home (Pol.VI) Department,
Secretariat, Chennai-9.
- 2.The Principal Secretary to Government,
Home (Pol.VI) Department,
Secretariat, Chennai-9.
- 3.The Director General of Police,
Tamil Nadu, Chennai-600 004.
- 4.The Deputy Inspector General of Police,
Trichy Range, Trichy,
(i/c) Thanjavur Range,
Thanjavur.
- 5.The Superintendent of Police,
District Police Office,
Thanjavur.



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MUMMINENI SUDHEER KUMAR, J.

abr

Pre-delivery Order made in
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26.03.2024