

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-12-2014

CORAM :

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.P.Nos.17012 & 17013 OF 2014
and connected MPs.

1. The State of Tamil Nadu,
represented by its Principal Secretary
to Government,
Home (SC) Department,
Fort St.George, Secretariat,
Chennai - 600 009.
 2. The Director General of Police,
Tamil Nadu,
Chennai-600 004. ... Petitioner in both W.Ps.
- vs.
1. A.G.Ponn Manickavel, IPS.
 2. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104. ... Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writs of Certiorarified Mandamus to call for the records of the Hon'ble Central Administrative Tribunal, the second respondent herein pertaining to the impugned order dated 02.05.2014 made in Original Application No.1483 and 1484 of 2013 and quash the same.

For Petitioners : Mr.A.L.Somayaji,
Advocate General,
assisted by Mr.T.N.Rajagopalan,
Special Govt. Pleader
For R1 : Mr.Vijay Narayan,
Senior Counsel,
for M/s.Menon, Karthik, Mukundan.
For R2 : Tribunal

Order reserved on : 23.09.2014
Order pronounced on : 23.12.2014

C O M M O N O R D E R

V.DHANAPALAN, J.

These two Writ Petitions viz., W.P.Nos.17012 and 17013 of 2014, have been filed, praying for issuance of writ of certiorari to call for the records of the common order, dated 02.05.2014, passed in O.A.Nos.1483 and 1484 of 2013 respectively, on the file of Central Administrative Tribunal, Madras Bench, and quash the same.

2. Since the issue involved in these Writ Petitions is one and the same, the Writ Petitions themselves are taken up together and decided by way of a common order. By consent, both the Writ Petitions are taken up together.

Facts of the case:

3. Case of the petitioners is as follows :

Thiru S.R.Jangid, IPS., formerly Deputy Inspector General of Police, Chengalpattu Range, in his reports, dated 09.03.2003, had brought out various allegations against Mr.A.G.Ponn Manickavel, IPS, namely, the first respondent herein, who was then Superintendent of Police, Chengalpattu East District, like misappropriation of case properties, involvement in heinous crime, direct involvement in a case of assault and covering up the case by dishonest means, connivance with Indian made foreign liquor shop keepers/bootleggers, interference with investigation, swindling of Government money, misappropriation of welfare fund contributed by policemen, illegal instructions to Station House Officers and Sub-Divisional Officers, nexus with quarry contractors etc., issuing of arbitrary transfer and posting orders, wasting manpower, correspondence with higher officials without routing through proper channel, failure to attend meetings and disobedience of orders of superiors, failure to attend law and order meetings of District Collector and foisting of false cases against subordinate officers.

4. Apart from the above mentioned report of the Deputy Inspector General of Police, Chengalpattu Range, petitions from various persons viz., Thiru A.Manivannan, a compulsorily retired Police Constable, and others, containing various allegations against the first respondent were also received by the first petitioner. The aforesaid allegations were examined in detail by the first petitioner herein, whereupon the said allegations, which were found fit to be enquired into by the Directorate of Vigilance and Anti-Corruption, were referred to the said investigating agency for a detailed enquiry on 02.06.2006, with the concurrence of the Vigilance Commissioner.

Certain other allegations, which could be enquired by the second petitioner herein, were referred to him for an enquiry and report, which was the subject matter in Original Application No.1484 of 2013, filed by the first respondent before the Central Administrative Tribunal.

5. The Directorate of Vigilance and Anti-Corruption conducted a detailed enquiry against the first respondent and framed 20 allegations, which came under vigilance angle. During the course of the said detailed enquiry, involvement of four subordinate officers, who worked under the first respondent during the relevant period of allegation, had also come to the light of DVAC incidentally. After completing the detailed enquiry by examining various witnesses and documents, the DVAC submitted its report to the Vigilance Commissioner on 21.02.2008, holding certain allegations as substantiated against the first respondent and recommended to initiate departmental disciplinary action against him, based on the strength of oral and documentary evidence. DVAC had also held certain allegations against the first respondent as not substantiated for want of evidence and recommended to drop further action against the first respondent in respect of the said not substantiated allegations. DVAC had also recommended to initiate departmental disciplinary action against four subordinate officers in respect of substantiated allegations. DVAC, while submitting its detailed enquiry report, had forwarded copies of various letters sent by the first respondent to its Investigating Officer and other high ups, indicating line on which enquiry to be conducted against him.

6. Further, the tone and tenor of the contents of the letters directs the Investigating Officer of DVAC to conduct enquiry as per his wishes and even he used the word "advised", which are normally used to the subordinates, but, in this case, the Investigating Officer of DVAC is the Inspector of Police, who is not the subordinate of the first respondent. The first respondent was at his liberty to give defence to the Investigating Officer to the allegations enquired against him and he is not expected to give direction/advise/suggestion on the line of investigation. The first respondent was also examined by the Investigating Officer of DVAC and his statement was also recorded.

7. The Vigilance Commissioner, in his communication dated 26.06.2009, endorsed the aforesaid recommendations of the Directorate of Vigilance and Anti-Corruption and forwarded the said detailed enquiry report to the first petitioner for initiating departmental disciplinary action against the first respondent and his subordinate officers in respect of the substantiated allegations.

8. On examining the detailed enquiry report of the Directorate of Vigilance and Anti-Corruption, the first petitioner herein directed the said agency to clarify certain points of doubts in letter dated 09.09.2009, after duly consulting the Vigilance Commissioner. DVAC clarified the points of doubts raised by the

first petitioner vide clarification report, dated 06.11.2009. After careful examination of the detailed enquiry report and clarification report of the said agency, and observing all required procedures, the first petitioner decided to initiate departmental disciplinary action against not only the first respondent but also against four other subordinate officers from the rank of Inspector of Police and Deputy Superintendent of Police, who worked under the first respondent during the relevant period of allegation and remitted the matter pertaining to the four subordinate officers to the second petitioner to take disciplinary action under relevant disciplinary rules against them.

9. Accordingly, the second petitioner also arranged to frame charges against the said four subordinate officers, obtained their written statement of defence, appointed Inquiry Officers who conducted oral inquiry and submitted their findings and forwarded them to the first petitioner. The first petitioner, after observing all the required formalities, passed final orders in the departmental disciplinary proceedings initiated against the said subordinate officers.

10. As far as the departmental disciplinary proceedings against the first respondent is concerned, the first petitioner is the competent authority to frame charges and hence he framed the charges under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969, against the first respondent in the Government letter No.SC/4653-16/2009, Home (SC) Department.

11. First respondent was requested to submit his written statement of defence within a period of 15 days to the first petitioner from the date of receipt of the charge letter. First respondent acknowledged the charge letter only on 13.07.2010 and in his letter dated 03.08.2010, he had requested 60 days time to submit his written statement of defence. The charge letter issued on 05.06.2010 was delivered to the first respondent's office on 11.06.2010 itself, but the first respondent herein has acknowledged it belatedly on 13.07.2010. Therefore, it was then ordered to grant 30 days time from 14.08.2010 to submit the written statement of defence by the first respondent in letter dated 21.08.2010.

12. The first respondent, who sought extension of time to submit his written statement of defence and thereby submitting himself for the said departmental disciplinary proceedings, instead of submitting the written statement of defence to the charges framed, filed Original Application No.1200 of 2010 before the Central Administrative Tribunal, Madras Bench, on 30.09.2010, which admitted the said application on 07.10.2010 and also granted interim stay on the same day, i.e., on 07.10.2010, till the next date of hearing.

13. Section 24 of the Administrative Tribunals Act, 1985, it has been specifically provided that no interim order shall be made in any proceeding unless copy of the application and documents are provided

to the opposing party and the said party is also given an opportunity to be heard in the matter, whereas the Central Administrative Tribunal granted interim stay on 07.10.2010, without providing the copy of the application and documents and also without offering opportunity to first and second petitioners, in violation of the Act, and subsequently extended the interim order. The first petitioner also filed a petition before the Tribunal, praying to vacate the interim stay and it was pending then. The first petitioner had filed reply affidavit to the Original Application No.1200 of 2010 before the Tribunal on 05.04.2011. The Tribunal, by its order dated 25.11.2011, had dismissed the said application, as withdrawn.

14. The first respondent herein withdrew the Original Application on 25.11.2011, without any liberty to file fresh application for the same cause of action and without offering any reasons for such withdrawal. Therefore, the first respondent gave up his right to challenge the charge letter unconditionally and submitted himself to the departmental enquiry. Inasmuch as the first respondent withdrew the original application filed by him, it was open for the petitioners to proceed with the departmental disciplinary proceedings initiated against him as per the Rules. Hence, the first respondent was requested to submit his written statement of defence within 10 working days from the date of receipt of the letter in the Government letter No.HSC.5/214-1/2012, Home (SC) Department, dated 15.03.2012. However, the first respondent, in his letter dated 04.04.2012, had stated that he had received the Government letter on 22.03.2012 and requested to permit him to avail 60 days to submit his written statement of defence and as such this time also, the first respondent submitted himself to the departmental disciplinary proceedings. Therefore, it was construed that the first respondent had no explanation to offer and hence Thiru P.Kannappan, IPS, Inspector General of Police, Intelligence (Internal Security), Chennai, has been appointed as the Inquiring Authority to inquire into the truth of the charges framed against him in G.O.Ms.No.741, Home (SC) Department, dated 25.09.2013.

15. Instead of appearing before the Inquiring Authority, the appropriate forum, the first respondent has again chosen to approach the Central Administrative Tribunal, by way of filing Original Application No.1483 of 2013 and another Original Application No.1484 of 2013 (against another departmental disciplinary proceedings) on 28.10.2013, for the same cause of action, which were withdrawn by him earlier, without seeking any liberty to file fresh application.

16. Original Application Nos.1483 of 2013 and 1484 of 2013, which were listed for admission on 29.10.2013 before the first Bench of the Central Administrative Tribunal, were adjourned by four weeks on the request of the counsel for the first respondent herein, without passing any orders. In the meantime, the said two applications had been taken up by the second Bench of the Tribunal on 14.11.2013 itself and the second Bench admitted the aforesaid applications and also granted interim stay and adjourned the matter to 16.12.2013. At

this point of time only, notice, interim order and copies of Original Applications were sent to the first petitioner.

17. Since the interim order dated 14.11.2013 passed by the Tribunal was violative of Section 24 of the Administrative Tribunals Act, the petitioners filed W.P.Nos.32351 and 32352 of 2013 (subject matter in Original Application No.1484 of 2013) before this High Court. This Court, in its common order, dated 03.12.2013, set aside the interim orders dated 14.11.2013 of the second Bench of the Tribunal and directed the first petitioner to file counter within one week from the date of the order and the Tribunal to dispose of the matter relating to interim relief within a period of one week therefrom. As directed by this Court, the first petitioner filed reply affidavit before the Tribunal on 10.12.2013 in O.A.Nos.1483 and 1484 of 2013 and the Tribunal also heard the arguments on 17.12.2013 and 18.12.2013 and passed orders on 27.12.2013, granting interim relief i.e., interim stay and injunction in the matter, whereby directing the petitioners to consider the first respondent for promotion to the next higher rank, should any DPC be held during the pendency of the applications, and also making it clear that the promotion, if any granted, will be subject to the outcome of the applications.

18. As against the said interim order dated 27.12.2013, the petitioners filed W.P.Nos.7318 and 7319 of 2014 before this Court, whereupon this Court quashed the said interim order of the Tribunal and directed the Tribunal to dispose of the main cases in Original Applications within a period of one month, pursuant to which the Tribunal heard the arguments from both sides and passed orders on 02.05.2014, allowing the Original Application Nos.1483 and 1484 of 2013, filed by the first respondent, and quashing the charge letter, dated 05.06.2010, the subject matter in O.A.No.1483 of 2013, and charge letter, dated 01.10.2013, the subject matter in O.A.No.1484 of 2013. Hence, these Writ Petitions, at the instance of the State.

Counter affidavit of the first respondent:

19. First respondent, who is the contesting party, has filed a counter affidavit in both the Writ Petitions, stating as under :

He is a member of the Indian Police Service, now the Deputy Inspector General of Police, Idol Wing-CID, and is due for promotion to the next higher rank as Inspector General of Police. During the years 2002 and 2003, he worked as District Superintendent of Police in the then Chengai (East) District and his Range DIG was Mr.Jangid. During the said period, there developed sharp professional differences between them due to value conflicts in respect of his anti-corruption pursuits particularly against Police officers having secret and underhand affiliations and nexus with land mafia and his enforcement of strict discipline against the corrupt subordinate Police officers in the district and their covert backing by the then DIG and his rightful defiance and lawful non-cooperation to the then DIG's hidden and secret habitual floating of huge House building societies involving crores and crores of money in Manapakkam Village

in Chennai Nandhampakkam Police Station Limit, Thuraipakkam of Chennai, Karambakkam Village OMR, Whimco Nagar, Ennore, in the then Chengai (East) District and Nagamalai Pudukottai Village, Thirumohur Village and Kathakinaru Village in Madurai District.

20. A detailed enquiry by the DVAC against Mr. Jangid, ADGP has been ordered during 2013 and the same is pending now as it became publicly evident from the reply of the Advocate General made before this Court during 2013 relating to illegal encroachment of Village pond by the then DIG in criminal league with the then Collector of Kancheepuram District. It was the local affected Villagers who took the matter to this Court.

21. The said professional differences eventually transformed into personal rancour and personal vendetta by the then DIG who started initiating reports after reports against him in respect of almost same set of allegations with few additional embellishments here and there by assigning different para numbers to the same paras relating to the same year i.e. 2002-2003.

22. The strong and convincing evidence that there existed a strong interpersonal friction and strained relationship between him and the then DIG who developed a rancorous inimical attitude towards him is irresistably inferable from the six reports he had initiated against him in relation to the same period 2002-2003. It is again plainly and irrefutably evident from the fact that the then DIG even went to the extent of castigating and condemning his personality and integrity profile in his 2002-03 Annual Confidential Report by heartlessly engineering such wild and dangerously malicious remarks as plainly noticeable below:

- (a) "Snake in the grass -
neither desirable nor reliable"
- (b) "he is a pervert"
- (c) "a savagery and sadistic officer"
- (d) "a self aggrandizer"
- (e) "very sociable with undesirable elements
and unsocial with civilized people"
- (f) "not fully dedicated duty"
- (g) "generally biased"
- (h) "does not pay attention to detail"
- (i) "cannot withstand pressure"
- (j) "biased and does not take principled stand"
- (k) "knows law only on letter"

23. This knowledge of seriously strained relationship between him and the then DIG became known in the entire state police community, the press and the public. The true object of writing ACR by senior police officers is not to condemn the junior officer by recording wild and beastly remarks as done by the then DIG against him but only to positively indicate the grey areas with advisory notes to correct and set them right in the years to come. But the then DIG used the ACR of the respondent as a tool to condemn his career prospects.

24. The then DIG was not the only officer with whom he worked, but he worked under 27 other senior IPS officers of whom, some of the most celebrated professionals are DGP Tr.Paramveer Singh, IPS (Special Director, CBI), DGP Tr.K.Vijaykumar, IPS, Tr.R.N.Savaani, IPS (ADGP), Tr.K.Radhakrishnan, IPS (ADGP), Tr.Tamilselvan, IPS (ADGP), Tr.Narenderpal Singh, IPS (DGP, CBCID), etc. Following are their consistent assessment of the integrity of his profile.

- "above-board", (year - officers)
- "honest"
- "absolute"
- "beyond reproach"
- "impeccably rectitudinal and beyond reproach"
- "beyond doubt"

25. Following are their consistent assessment of his performance and productivity profile :

- "very good", (year - DGP Tr.Natraj, IPS (Retd.)
- "bold officer with zeal to learn and sincere and hardworking" - overall rating is very good. (ADGP Tr.Savaani, IPS and ADGP Tr.Ramanujam, IPS)
- A smart, enthusiastic and knowledgeable youngster. Always willing to take responsibilities, hard working. He is an officer with a lot of promises for the future policing.
- Honesty, loyalty and high degree of professional integrity are the good qualities, no short coming. Originally and comprehensive. (ADGP Tr.SylendraBabu, IPS and ADGP Tr.D.Manoharan, IPS (Retd.))
- Very good, sincere, loyal, dependable and very hard working. An excellent officer with good intention to make the police very effective and razor-sharp in responding to the public needs. He will rise to occasion at any time (ADGP Tr.K.Radhakrishnan, IPS)
- A very energetic, sincere, enthusiastic, hard working and courageous officer. An asset to the Department. (DGP Tr.Paramveer Singh, IPS, Special Director, CBI)
- OUTSTANDING. He is very reliable, bold, effective and track oriented. He can be relied upon to handle tough law and order situations. (ADGP Tr.S.K.Dogra, IPS)
- OUTSTANDING. He is a highly reliable, daringly bold, effectively enforcing and task oriented professional. He can be relied upon to handle any toughest law and other situation in the District. He was individually instrumental

for carrying out all of my orders in the notorious gangster Asaithambi operation on 31.07.1996. Overall performance : Outstanding. (ADGP Tr.G.Nanchilkumaran, IPS (Retd.))

- OUTSTANDING. An active, energetic, hard working and sincere officer. As an integral part of the "operation team" formed to apprehend the accused concerned in the Coimbatore serial blast cases, has boldly and courageously spear-headed as well as participated in various operations done both within and outside the State conducted amidst several odds, facing severe threat to life and has been responsible for the apprehension of a considerable number of accused arrested in this case. Was instrumental for the apprehension and interrogation of prime accused Mohd. Ali Khan @ Kutty who had given the major breakthrough in the case. Has also done a commendable job in the investigation of the case, in helping to unearth the conspiracy and in the charge sheeting of the case. (IGP - Tr. Thamaraikannan, IPS, DGP Tr.Paramveer Singh, IPS Special Director - CBI)
- Outstanding. What is worthy of recording a crucial fact respecting a transaction that took place during a high level conference presided by the then Chief Minister and attended by hundreds of IPS and IAS and other officers. During the conference, the IGP, Tr.Tamilselvan, IPS had opted to openly urge all the District Superintendents of Police present in the conference to emulate SP Tr.Ponn Manickavel in respect of the my commitment to public service with special reference to my Public Grievances Redressal meetings. The Reporting Officer Mr.Jangid, the then DIG was himself present in the conference. (ADGP Tr.Tamilselvan IPS, DGP Tr.Narendrapal Singh, IPS and ADGP Tr.K.V.S.Moorthy, IPS, (Retd.)).
- A very good officer. His strength is his courage to face the challenges. His attitude towards weaker sections is also good. I would revise his grading higher because of the work output. Nearly 600 women SIs were trained in batches of around 80 under his direct supervision, and over 2000 police constables were trained under his aegis. He might have lacked a bit in interpersonal relations, but he was very tough on himself as also on his junior colleagues.
- I have mentioned his shortcomings on lack of finesse in inter-personal dealings, but for which he would have got 10/10 already. But he kept himself fighting fit and toured the State extensively with the huge task of forming the District Jungle Force under his supervision. He has stirred up the STF, and kept it fighting fit. I have also commented in this officer's observation in Part-IV on the State Homicide Bureau which shows his high professional thinking.

He is very thorough in Rules and Regulations. Hence, I revise his overall grading as 9.6 out of 10 (DGP Tr.K.Vijayakumar, IPS (Retd.)).

26. Besides all these glowing encomia recorded by all the 27 senior IPS officers (except the then DIG Mr.Jangid), he has had a meritorious service career and earned excellent outstanding grading and assessment of his Superiors. In such circumstances, the failure to consider these unimpeachable documentary proof of high probative force in his evidence is truly unjust and arbitrary. He was the first District SP who had gone public through his mobile number. He decimated the trace of illicit-arrack in the then arrack endemic Chengai (East) District. By enforcing intrinsic discipline at all levels, he proved very tough not only on his subordinates but also on himself too by working for a minimum of 16 hours a day.

27. He is the first IPS officer in the entire country since 66 years who, while holding the charge of administration of a District, had personally investigated an offence of double murder of a lactating mother and 13 months old baby following by rape of the lactating mother followed by destruction of crime scene evidence with a view to project a false theory of dowry suicide by dousing the two murdered corpus-delicti with kerosene and set them ablaze during 2003. This case was initially investigated defectively as a case of dowry suicide by the DSP and the Sub-Divisional Executive Magistrate in view of being a case of death of a married woman within 7 years.

28. It was he, who on the fourth day, detected the offence of murder and took it for his personal investigation because the death of the 13 month old baby took place on 15th August, being the Independence day of the country. It took nearly 10 years for him to bring the ultimate justice to the victims of this double murder followed by rape through the judgment of the Hon'ble Supreme Court of India. To get the encomium of the Hon'ble Supreme Court of India is the rarest of rare accomplishment for any IPS officer in the country including him. His personal investigation relates to 2003, which is relevant to the period of the articles of charges of the impugned charge letter, whereas, the then DIG, a police bureaucrat, had adversely remarked against him in his ACR 2002-2003 that "he knows law only in letter" and that "he is a pervert", "he is a snake in the grass" and thereby the then DIG had manifested his inner and deep-seated malice against him.

29. There is no IPS officer in this State since 1947, who, in the capacity of District Superintendent of Police or for that matter in any other rank from SP to DGP, had personally investigated, chargesheeted and prosecuted any murder case or murder for robbery or murder for dacoity or robbery or dacoity in their life time as a police officer. Importantly, none of these 27 senior officers had ever covertly embarked upon such extra legal profiteering land dealings like promoting House Building societies under the cover of

Co-operative Societies Act as the then DIG had been doing covertly under the pretext of police welfare while the Government approved TNPSC is very well existing and functioning in the State. Almost 9 out of 10 vernacular and English Dailies in the State had lauded his work profile particularly his face to face public grievance redressal meetings which he held every Friday subdivisions wise between 9.00 a.m. and 3.30 a.m., the next day, till the last petitioner was reasonably heard.

30. The most effective powerful mechanism of redressal by him brought to light the entire gamut of police misdeeds, misfeasance, malfeasance viz. corrupt practices of subordinate police, willful non-registration of cognizable cases by disregarding the directives of law, wrongful remand of innocents through false cases by subordinate police, underhand affiliations with criminals and anti-socials, moral offences and he dealt with such criminalized police officers effectively by invoking the provisions of penal law including Prevention of Corruption Act much against the chagrin and distaste of the then DIG. Except for one year, i.e. 2002-2003 under the then DIG, he consistently earned outstanding ratings with glowing observations in respect of his integrity profile, performance profile and productivity profile through more than 40 senior IPS officers in 22 years. He could not go along with and failed to co-operate with the then DIG on the ground of conflict of interest relating to values like anti-corruption pursuit against the dangerous and corrupt lot in Khaki, neutralism, service to the cause of poor victims of crime, etc. This is one of the chief backdrops for the grave bias and rancorous prejudice and hatred harboured by the then DIG against him. No action could be taken against him in the first enquiry (C.No.156/Camp/DIG/CHR/2002, dated 06.08.2002) during 2002 and the second State CBCID enquiry (C.No.64/DIG/CHENGAI/CAMP/2003, dated 09.03.2003) during 2003 even after 11 years.

31. Upon frustration due to no action against him from the State CBCID enquiry during 2002 and 2003, the then DIG did not hesitate to raise serious baseless allegations against the CBCID that CBCID was protecting him and that it had threatened the witnesses including Inspectors from deposing against him. The hatred and malice of the then DIG became more acute and severe only after he telegraphed the interim order of the Hon'ble Supreme Court on 26.09.2005 restraining his enquiry jurisdiction against him in that case and such order of the Hon'ble Supreme Court became his abomination. The then DIG successfully managed to have the DVAC enquiry ordered against him during 2006 and the DVAC enquiry continued till 2009 under his secret supervision assisted by the enquiry officer of the DVAC. And again after coming to know secretly from the Inspector/Enquiry Officer, DVAC, who was his Special Branch Sub-Inspector when the then DIG was his Superintendent of Police, Cuddalore District that the outcome of the enquiry would not be favourable to the expectations of the then DIG, he prospectively managed to have the fourth enquiry against him in respect of same set of allegations with few embroidered embellishments ordered by him through the Central Administrative

Tribunal relating to the same year 2002-2003 against him.

32. Further, date of order for detailed enquiry by DVAC during 2006 and date of order for enquiry by IGP, Crime Tr.Thukkaiyandi during 2008 are eye-catching only after the order of the Hon'ble Supreme Court on 26.09.2005 telegraphed by him to the then DIG forbidding his enquiry jurisdiction against him. During 2002, the then DIG initiated his first report against him levelling serious allegations vide his report in C.No.156/Camp/DIG/CHR.2002 dated 06.08.2002 to the then DGP that he was changing the posting of Inspectors and DSP unauthorizedly and penalizing the officers and requested disciplinary action against him. Till date, no action was initiated against him either by the Government or by the then DGP. During 2004, the then DIG instigated Mr.A.Manivannan, a compulsorily retired Police Constable, arrested at Bangalore and jailed by him in connection with his crime in eight criminal cases, to forward a petition against him with false and fabricated facts and this fact has been admitted by him in his reply affidavit in O.A.No.1200 of 2010, dated 05.04.2011.

33. The said Police Constable A.Manivannan committed series of offences against innocent public and offences relating to distillation of illicit-arrack in the then Chengai (East) District when he was its Superintendent of Police. Eight criminal cases were registered against him in connection with his offences against the public and the police. He absconded to Bangalore. He was arrested at Bangalore and remanded before the Hon'ble Judicial Magistrate Court, Tambaram for injuring Tr.Selvaraj, an innocent victim. The criminal cases and other incriminating facts and circumstances relating to the compulsorily retired police constable Mr.A.Manivannan could reasonably form the basis for the evidence of his bad character and criminal misconduct.

34. Going by the volume of the reports of the then DIG running beyond 500 pages, it is self evident that the then DIG during his tenure as Chengai Range DIG did not do any meaningful and socially constructive work other than his destructive act of constantly and relentlessly pursuing against him by conspiring, instigating and acting in concert with bad elements by developing groupism in the District and the corrupt - lot in Khaki against whom he took various types of corrective actions in the interest of well-being of the force. The then DIG forwarded reports after reports from year to year to the Director General of Police, DVAC and the State CBCID. This is more than sufficient evidence in proof of the dangerous malice of the then DIG having been nurtured against him.

35. Except for a few additional embroidered embellishments maliciously engineered by the then DIG, the allegations enquired by DVAC were substantially the same as those allegations which were already enquired into twice by the State CBCID during 2002 and 2003. He had already explained all those allegations in writing before the Director, DVAC, requesting the Director not to allow the machinery of

the DVAC to act as an instrument of oppression against him in the hands of the gravely biased and dangerously malicious and harmful officer the then DIG, vide his representation in C.No.08/SP/STF/CAMP/07, dated 17.02.2007.

36. The then DIG did not rest with his report to the DVAC but sought to obtain the development in the DVAC enquiry by having recourse through RTI Act. But the learned Director had turned down his RTI request, which shows the evidence that the then DIG would always relentlessly pursue his bad intention and fiendish design against him. Upon secret feedback that action would not be taken against him in a way expected by him from the DVAC enquiry officer, the then DIG managed to have the enquiry by the IGP, Crime Tr.Thukkaiyandi and subsequently by the IGP, EOW Tr.Vijayakumar ordered during 2008 by him through the Director General of Police against him relating to the same period 2002-2003 with few embroidered additional allegations. The fact of the then DIG requesting for DVAC enquiry against him by levelling baseless serious allegations against the State CBCID has found a specific place in his report dated 09.03.2003 addressed to the Registrar, Central Administrative Tribunal.

37. He came to know that the Central Administrative Tribunal on 06.10.2008 had directed the Inspector General of Police (Crime), ThiruThukkaiyandi, I.P.S., to conduct an enquiry respecting the same set of allegations respecting the same period 2002, i.e. 2600 days before when he was Superintendent of Police, Chengai (East) District. It is believed that the Director General of Police did not order the enquiry officer to find out the truth behind the allegations. It is again believed that the Director General of Police had let known his decision beforehand to the enquiry officer vide his memo in the very first para that "it is decided to initiate departmental disciplinary action u/r 8 of All India Services (D & A) rules in respect of the following allegations and IGP, Crime Tr.Thukkaiyandi and subsequently IGP, EOW Tr.Vijayakumar shall conduct enquiry, prepare draft charge letter irrespective of the outcome of the final findings of such enquiry. Thus the malicious afterthought of the Director General of Police is irresistably inferable and latently evident. The Director General of Police had straightaway directed him to conduct enquiry and to send the prepared draft charge letter, with statement of imputations, list of witnesses, list of documents and a soft copy irrespective of the outcome of the final findings of such enquiry.

38. The Director General of Police had predetermined his action and pre-decided his mind without first even proposing to assess the materials collected pursuant to the enquiry and satisfying as to the sufficiency of materials and evidence to initiate proceedings under the disciplinary rules. Instead, he straight-away directed to prepare draft charge letter. Coming to know about this, he made a detailed representation on 14.11.2008 to the Director General of Police to stop the enquiry pursuant to his memo by bringing to his notice that the allegations listed out in his memorandum are not new but very old

allegations similar to those levelled against him in the year 2002-2003, which in turn were already enquiry by the State CBCID twice for which there was no action against him even till today. Again, it was also brought to the notice of the Director General of Police that the allegations are also one and the same to those enquired by the DVAC in the year 2006, wherein, he had explained to all those allegations in writing to the Director, DVAC during 2007 itself.

39. The enormous time gap of 7 years between the fabricated allegations in the year 2002-2003 and the enquiry in the year 2008-2009 was also highlighted to the second petitioner by him vide his representation in C.No.01/CMT/XIV-BN/Camp/2008 dated 14.11.2008 and in such circumstances, he requested the second petitioner to stop the redundant enquiry pursuant to his Memorandum dated 06.10.2008 and 02.02.2009. Since the second petitioner was heedless, he, vide his representation dated 23.12.2008, requested the first petitioner to stop the enquiry, but no communication was received. The crucial fact that he did not share cordial professional relationship with the then DIG, who is directly instrumental for the issuance of the two memoranda dated 06.10.2008 and 02.02.2009, was also highlighted to the second petitioner in C.No.01/CMT/XIV-BN/Camp/2008 dated 14.11.2008, because the then DIG could manage to have the order for DVAC enquiry and enquiry by IGP, Crime Tr.Thukkaiyandi and subsequently by IGP, EOW Tr.Vijaykumar only after 2006, i.e., after the change of Government during 2006.

40. He was under the bonafide belief that the second petitioner would stop and drop the enquiry pursuant to memorandum dated 06.10.2008, since there existed valid grounds for dropping the enquiry, as made available in his representation to the second petitioner. However, by a letter dated 02.02.2009, the second petitioner directed Mr.Vijayakumar, IGP, EOW to conduct the enquiry into allegations as set out in the memorandum dated 06.10.2008 and to send the prepared draft charge letter along with statement of imputations, list of witnesses and list of documents irrespective of the outcome of the enquiry. The second petitioner is not interested in ordering the enquiry officer for ferreting out the truth behind the repeated same set of allegations but his object was to straightaway to conduct enquiry and obtain the prepared draft charge letter u/r 8 AIS (D&A) Rules against him without endeavouring to know the truth behind the allegation. This memorandum was apparently issued since Tr.Thukkaiyandi, IPS, had in the meanwhile been transferred from CBCID to DVAC. The contents of the memorandum dated 02.02.2009 like the memorandum dated 06.10.2008 establishes the predetermined mindset and malice aforethought of the second petitioner.

41. The second petitioner had issued the memorandum dated 06.10.2008 to the Inspector General of Police, Crime Thiru.Thukkaiyandi, IPS, informing him in writing that he has decided beforehand to initiate departmental disciplinary action u/r 8 of All India Services (D&A) Rules against him even before the commencement

of the enquiry. He was neither put on notice nor informed of this enquiry by both the enquiry officer and the second petitioner. No instruction was recorded in the memorandum to Mr. Vijayakumar, IGP to submit his findings as to the veracity and verity of the allegations levelled against him. Instead, a direction was given to him to sweepingly conduct enquiry and send the prepared draft charge letter u/r 8 AIS (D&A) Rules along with prepared statement of imputation, prepared list of witnesses and prepared list of documents with a soft copy early. The second petitioner has not considered the detailed representation made by him on 14.11.2008, highlighting the fact that six repeated enquiries on the same set of allegations against the same officer in relation to the same period 2002-2003 at the instance of the same gravely, biased officer, the then DIG, who intentionally engineered all these false and fabricated allegations with an ulterior motive to punish him through indirectly motivated charge letter at the back of which there is a long history of deep seated malice, grave prejudice nurtured by the then DIG against him.

42. When this Court appointed IGP, the then DIG to enquire into allegations of custodial torture in one of the police stations in Chennai city at his hands, particularly when he was SP, Coimbatore District, some 600 kms away from Chennai City, he filed an application to recall the said order appointing IGP / the then DIG Thiru Jangid as the enquiry officer highlighting the fact that they had professional as well as personal differences on various issues, whereby the IGP / the then DIG had developed inimical attitude towards him. Since the application was not entertained by this Court, he approached the Hon'ble Supreme Court, which in turn passed an interim order on 26.09.2005, staying the order of the High Court by forbidding the enquiry jurisdiction of the then DIG against him. Subsequently, the interim order of the Hon'ble Supreme Court was made absolute on 10.11.2007. Thereafter, on 19.06.2006, a charge letter was framed against him on the ground that he had contravened Rule 17 of the All India Services (Conduct) Rules by approaching the Hon'ble High Court and the Supreme Court without obtaining prior sanction of the Government and on the ground that the daily newspapers had highlighted the news causing embarrassment to the Government inasmuch as he had made allegations against the IGP, Thiru Jangid.

43. He challenged the charge letter by way of O.A.No.808 of 207 before the Hon'ble Court, which held that he had not contravened Rule 17 of the concerned Rules, by approaching this Court as well as the Hon'ble Supreme Court for relief. It was also held that he cannot be held responsible for the publication of the news items, which purportedly caused embarrassment to the Government. The learned Tribunal finally concluded that the allegations made out in the charge memorandum do not constitute any misconduct. In such circumstances, the learned Tribunal quashed the charge memorandum in letter No.SC/6185-7/05 dated 19.06.2006 as being wholly illegal and unsustainable in law vide its order dated 25.11.2008 in O.A.No.808 of 2007. After this, two more charge letters had been issued against him based on the same and repeated reports of the then DIG. Upon

frustration on the order of the learned Tribunal setting aside the charge letter as wholly illegal, very shortly after this order, the then DIG has managed to have an enquiry ordered by the second petitioner during 2008 through the IGP, Crime in respect of the same set of allegations with few more additional allegations here and thereby erasing the para numbers with whitener and renumbering the para and have it xeroxed. The impugned memoranda dated 02.02.2009 have been issued by the second petitioner, who did not even care to heed his objective representation particularly his 19 years track record of performance profile and integrity profile.

44. In such circumstances, he filed O.A.954 of 2009 before this Court, seeking to quash the charge memorandum issued by the second petitioner on 06.10.2008 and 02.02.2009. During pendency of the same, he moved a Miscellaneous Application No.463 of 2009, seeking an interim direction to include his name in the panel for promotion to the post of Deputy Inspector General of Police without reference to the Memorandum dated 06.10.2008 and 02.02.2009. Vide further order dated 20.11.2009, the learned Tribunal granted interim stay of all further proceedings pursuant to the Memorandums dated 06.10.2008 and 02.02.2009 issued by the second petitioner. However, on 11.06.2010, the second petitioner has forwarded a charge letter in SC/4653-16/2009 dated 05.06.2010 framed against him under Rule 8 of the All India Services (Discipline and Appeals) Rules, 1969 with two articles of charge against him.

45. The charge letter was issued with a delay of 2555 days and was highly belated, as it relates to certain alleged incidents taken place in the year 2002-2003 i.e., 11 long years before. The learned Tribunal was pleased to grant an interim stay of the charge memorandum dated 05.06.2010 in O.A.No.1200 of 2010, which was periodically extended. While he was waiting for such orders from the petitioners, he received a letter from the petitioners asking him to submit his written statement of defense to the charge memorandum dated 05.06.2010 within a period of 15 days. A letter dated 20.03.2012 was issued by the second petitioner requesting him to acknowledge receipt of the Government letter dated 15.03.2012. Immediately, he made a representation on 04.04.2012 to the first petitioner through the second petitioner, highlighting the truthful background, which led to the withdrawal of the two pending original applications. It was also highlighted that the allegations of two lapses of petty nature in the charge letter dated 05.06.2010 were in respect of transactions that took place as long as 3800 days before on the basis of the first report dated 09.03.2003 maliciously engineered by Mr.Jangid. It was also highlighted that few of the witnesses mentioned in the charge memorandum had retired and a few of them had expired and that he is seriously handicapped and may not be having a reasonable opportunity to defend himself inasmuch as the alleged incident took place almost 3800 days before. He however sought 60 days time to submit his written statement of defense.

46. There was no response to the said letter, but now on this

occasion, there was no order either permitting or not permitting the time sought for by him vide his representation dated 04.04.2012. Now, all of a sudden after a gap of 540 days from the date of his representation dated 04.04.2012, the Government issued G.O.Ms.No.741 dated 25.09.2013, appointing an Enquiry Authority to proceed with the charge letter against him. On the same day, by G.O.Ms.No.742, the Enquiry Authority was delegated with powers to summon any person to appear before him or to produce any document or thing or any information in possession, the production of which in the opinion of the Enquiry Officer to conduct the enquiry initiated against him. He, upon taking legal advice, informed that the continuation of the proceedings in the charge memorandum is against law and filed O.A.No.1483 of 2013 before the Hon'ble Tribunal. After hearing the submissions made on his behalf, the Hon'ble Tribunal was pleased to grant the interim relief sought for by him vide its order dated 14.11.2013.

47. Aggrieved by the aforesaid order, the petitioners filed W.P.Nos.32351 and 32352 of 2013 before this Court. On 03.12.2013, this Hon'ble Court set aside the interim order on the legal premise that no reasons have been recorded by the Hon'ble Tribunal while granting the interim relief and further remanded the matter back to the Hon'ble Tribunal for fresh consideration. The writ petitioners also filed their reply affidavit on 10.12.2013 and thereafter, elaborate submissions were made by both sides on the issue of interim relief. The Hon'ble Tribunal by its order dated 27.12.2013 granted the interim relief of stay of the departmental proceedings initiated against him and also a direction to consider him for promotion to the next higher rank.

48. Again, aggrieved by the aforesaid order, petitioners filed W.P.No.7318 of 2014 before this Hon'ble Court and this Court by its order dated 15.04.2013 disposed of the writ petition by giving a time bound direction for the Hon'ble Tribunal to dispose of the original applications on merits and in accordance with law. Further, it was made clear that the direction passed by the Hon'ble Tribunal to consider his case for promotion during the pendency of the applications cannot be sustained and that any promotion made on the recommendations of the DPC would be subject to the final orders to be passed by the Hon'ble Tribunal.

49. At the time of final hearing before the Tribunal, it was urged on his behalf that the inordinate delay in framing the charge memorandum caused huge prejudice and was not properly explained by the petitioners herein, that the action of the petitioners was tainted by malice in law inasmuch as the proceedings were initiated at the time when he is in line for promotion to the next higher rank of Inspector General of Police, that the genesis for the proceedings was admittedly on the basis of reports put up by his erstwhile superior, the then DIG of Police, Chengalpattu Range and also on the basis of complaints given by a disgruntled compulsorily retired police constable with a notorious criminal record, which clearly

showed lack of bonafides in the action of the writ petitioners. Finally, the Hon'ble Tribunal, by its detailed and reasoned order, allowed the original application and quashed the charge memorandums. Against the said order, the present writ petitions have been preferred.

Submissions of the petitioners:

50. Mr.A.L.Somayaji, learned Advocate General, appearing for the petitioners mainly contended two important points to assail the impugned order of the Tribunal. Firstly, as the first respondent has already challenged the order in question and withdrawn the same without seeking liberty, he cannot now take the same order for challenge in these writ petitions, which is unsustainable in law. Secondly, the ground under which the learned Tribunal allowed the Original Applications was that there was inordinate and unexplained delay in initiating and concluding the proceedings.

51. In support of his contentions, the learned Advocate General would rely upon the following authorities:

(i) In the case of Union of India and others Vs. Upendra Singh, reported in 1994 (3) SCC 357, it has been held as follows:-

"13. Before parting with this case, we may refer to the decision of this Court in Union of India v. K.K. Dhawan⁶. Following A.N. Saxena² this Court held that a disciplinary inquiry can be held even with respect to the 6 (1993) 2 SCC 56 conduct of an officer in discharge of his judicial or quasi-judicial duties. Having said so, this Court set out the situations in which disciplinary action can be taken with respect to the judicial/quasi-judicial conduct. Paragraphs 28 and 29 of the judgment will bring out the ratio : (SCC p. 67, paras 28 and 29).

"28. Certainly, therefore, the officer who exercises judicial or quasijudicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases :

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconducting the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago 'though the bribe maybe small, yet the fault is great'."

(ii) In *Union of India and another vs. Kunisetty Satyanarayana*), reported in (2006) 12 SCC 28, it has been held as follows:-

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others* JT 1995 (8) SC 331, *Special Director and another vs. Mohd. Ghulam Ghouse and another* AIR 2004 SC 1467, *Ulagappa and others vs. Divisional Commissioner, Mysore and others* 2001 (10) SCC 639, *State of U.P. vs. Brahm Datt Sharma and another* AIR 1987 SC 943 etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one.

It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

(iii) In the case of Deputy Registrar, co-operative societies, Faizabad Vs. Sachindra Nath Pandey and others, reported in 1995(3) SCC 134, it has been held as follows:-

"7. On a perusal of charges, we find that the charges are very serious. We are, therefore, not inclined to close the matter only on the ground that about 16 years have elapsed since the date of commencement of disciplinary proceedings, more particularly when the appellant alone cannot be held responsible for this delay. So far as the merits are concerned, we regret to say that the High Court has not dealt with the submission of the appellant - that in spite of being given a number of opportunities the first respondent has, failed to avail of them. If the appellant's allegations are true then the appellant cannot be faulted for not holding a regular inquiry (recording the evidence of witnesses and so on). The High Court has assumed, even without referring to Regulation 68 aforesaid that holding of an oral inquiry was obligatory. Indeed, one of the questions in the writ petition may be the interpretation of Regulation 68. On facts, the first respondent has his own version. In the circumstances, the writ petition could not have been allowed unless it was held that the appellant's version of events is not true and that the first respondent's version is true. In the circumstances, we have no alternative but to set aside the order under appeal and remit the matter to the High Court once again for disposal of the writ petition afresh in the light of the observations made herein. Since the matter is a very old one it is but appropriate that the matter is dealt with expeditiously. Perhaps, it would be appropriate if the Court looks into the records relating to the disciplinary proceedings also."

(iv) In the case of (Chairman, Life Insurance Corporation of India and others vs. A.Masilamani), reported in (2013) 6 SCC 530, it has been held as follows:-

"18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that, the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable, in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, have to be examined, taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration, all relevant facts and to balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated, only on the ground of delay in their conclusion. (Vide: State of U.P. v. Brahm Datt Sharma & Anr., AIR 1987 SC 943; State of Madhya Pradesh v. Bani Singh & Anr., AIR 1990 SC 1308; Union of India & Anr. v. Ashok Kacker, 1995 Supp (1) SCC 180; Secretary to Government, Prohibition & Excise Department v. L. Srinivasan, (1996) 3 SCC 157; State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833; M.V. Bijlani v. Union of India & Ors., AIR 2006 SC 3475; Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906; and The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha."

(v) In the case of Anant R.Kulkarni Vs. Y.P.Education Society and others, 2013 (6) SCC 515, it has been held as follows:-

".... In the above decision, though the Supreme Court has held that enquiry cannot be set aside, on the ground of delay, it is emphasized therein that each case has to be looked into with regard to the gravity of the offence. In the very same decision in para 32, the Supreme Court itself has held that the charges are vague and they are unwarranted and uncalled for."

(vi) Panicker K.P. vs. Union of India (UOI) and others (W.P.(C) No.11825 of 2008) decided on 23.05.2008

"10. In our opinion, there is no merit in the

challenge to Ext.P1. A close reading of Ext.P14 and P2 applications discloses that the claim of the petitioner is for fixation of pay in the revised scale of pay of Rs.550-900. The claim made in Ext.P14 application (O.A.No.1073 of 1998) was abandoned by the petitioner when he chose to withdraw the said application and based on the petitioner's request, the Central Administrative Tribunal, Ernakulam Bench dismissed O.A.No.1073 of 1998 as withdrawn. It is thereafter that the second application, O.A.No.765 of 2001 was filed on 6.7.2001. Ext.P15 order discloses that the Tribunal had not while dismissing O.A.No.1073 of 1998 as withdrawn, granted leave to the petitioner to file a fresh application in respect of the reliefs sought therein. The Apex Court has in *Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others* - A.I.R.1987 S.C. 88 held that a petitioner cannot after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution without seeking and being granted leave to institute a fresh writ petition, file a fresh writ petition in respect of the same cause of action in the High Court. The Apex Court held as follows:

"9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art.226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in *Daryao's case* (supra) is of no assistance. But we are of the view that the principle underlying R.1 of O.XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution since such withdrawal does not amount to *res judicata*, the remedy under Art.226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action

relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Art.21 of the Constitution since such a case stands on a different footing altogether. We, however, leave this question open." (Emphasis supplied)

11. Applying the principles laid down by the Apex Court in the aforesaid decision to the facts of this case, we are of the opinion that the Tribunal was right in dismissing the second application. As held by the Apex Court, when the petitioner withdrew O.A.No.1073 of 1998 without seeking or being granted permission to file a fresh application in respect of the same subject matter, the remedy available to the petitioner under Section 19 of the Administrative Tribunals Act, 1985 should be deemed to have been abandoned by him in respect of the cause of auction based on which earlier application was filed. The Apex Court has in the aforesaid decision held that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of the writ petition also, not on the ground of res judicata but on the ground of public policy. In our opinion, the above said principle applies to applications filed under Section 19 of the Administrative Tribunals Act as well. As the subject matter of the two applications is one and the same, namely, fixation of pay in the revised scale of pay of Rs.550-900, the petitioner who chose to withdraw O.A.No.1073 of 1998 on 8.2.2001 without seeking or being granted liberty to institute a fresh application in respect of the same subject matter, should be deemed to have abandoned the reliefs sought by him therein. The petitioner is therefore not entitled to institute O.A.No.765 of 2001 in regard to the very same subject matter."

(vii) In a decision of the Kerala High Court in ILR 2008 (2) Kerala 753 & 2008(2)KLJ 502, it has been held as follows:-

"10. In our opinion, there is no merit in the challenge to Ext.P1. A close reading of Ext.P14 and P2 applications discloses that the claim of the petitioner is for fixation of pay in the revised scale of pay of Rs.550-900. The claim made in Ext.P14 application (O.A.No.1073 of 1998) was abandoned by the petitioner when he chose to withdraw the said application and based on the petitioner's request, the Central Administrative Tribunal, Ernakulam Bench dismissed O.A.No.1073 of 1998 as withdrawn. It is thereafter that the second application, O.A.No.765 of 2001 was filed on 6.7.2001. Ext.P15 order discloses that the Tribunal had not while dismissing O.A.No.1073 of 1998 as withdrawn, granted leave to the petitioner to file a fresh application in respect of the reliefs sought therein. The Apex Court has in *Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others* - A.I.R.1987 S.C. 88 held that a petitioner cannot after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution without seeking and being granted leave to institute a fresh writ petition, file a fresh writ petition in respect of the same cause of action in the High Court. The Apex Court held as follows:

"9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art.226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in *Daryao's case* (supra) is of no assistance. But we are of the view that the principle underlying R.1 of O.XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art.226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art.226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the

writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Art.21 of the Constitution since such a case stands on a different footing altogether. We, however, leave this question open." (Emphasis supplied)

11. Applying the principles laid down by the Apex Court in the aforesaid decision to the facts of this case, we are of the opinion that the Tribunal was right in dismissing the second application. As held by the Apex Court, when the petitioner withdrew O.A.No.1073 of 1998 without seeking or being granted permission to file a fresh application in respect of the same subject matter, the remedy available to the petitioner under Section 19 of the Administrative Tribunals Act, 1985 should be deemed to have been abandoned by him in respect of the cause of auction based on which earlier application was filed. The Apex Court has in the aforesaid decision held that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of the writ petition also, not on the ground of res judicata but on the ground of public policy. In our opinion, the above said principle applies to applications filed under Section 19 of the Administrative Tribunals Act as well. As the subject matter of the two applications is one and the same, namely, fixation of pay in the revised scale of pay of Rs.550-900, the petitioner who chose to withdraw O.A.No.1073 of 1998 on 8.2.2001 without seeking or being granted liberty to institute a fresh application in respect of the same subject matter, should be deemed to have abandoned the reliefs sought by him therein. The petitioner is therefore not entitled to institute O.A.No.765 of 2001 in regard to the very same subject matter.

We accordingly hold that though not for the reason stated by it, the Tribunal was right in dismissing O.A.No.765 of 2001. Further, Ext.P1

order was passed on 30.3.2007. This Writ Petition was presented on 3.4.2008, nearly one year thereafter. Though the petitioner has attempted to explain the long delay in filing this Writ Petition in the affidavit filed in support of this Writ Petition, in the facts and circumstances of the case, we are not persuaded to accept the said explanation.

We accordingly hold that there is no merit in the challenge to Ext.P1. The writ petition accordingly fails and it is dismissed in limine."

52. Per contra, Mr. Vijay Narayan, learned Senior Counsel appearing for the first respondent, would contend that there was inordinate and unexplained delay in initiating the departmental proceedings against the first respondent and hence the Tribunal was right in allowing the original applications, thereby quashing the charge memos. The learned Senior Counsel has relied on the following decisions :

(a) In the case of (Sarva Shramik Sanghatana (KV), Mumbai vs. State of Maharashtra and others), reported in (2008) 1 SCC 494, it has been held as follows:

"18. We have referred to the aforesaid decisions and the principles laid down therein, because often decisions are cited for a proposition without reading the entire decision and the reasoning contained therein. In our opinion, the decision of this Court in Sarguja Transport case (supra) cannot be treated as a Euclid's formula.

19. In the present case, we are satisfied that the application for withdrawal of the first petition under Section 25-O(1) was made bona fide because the respondent-company had received a letter from the Deputy Labour Commissioner on 5.4.2007 calling for a meeting of the parties so that an effort could be made for an amicable settlement. In fact, the respondent-company could have waited for the expiry of 60 days from the date of filing of its application under Section 25-O(1), on the expiry of which the application would have deemed to have been allowed under Section 25-O(3). The fact that it did not do so, and instead applied for withdrawal of its application under Section 25-O(1), shows its bona fide. The respondent-company was trying for an amicable settlement, and this was clearly bona fide, and it was not a case of bench hunting when it found that an adverse order was likely to be passed against it. Hence, Sarguja

Transport case (supra) is clearly distinguishable, and will only apply where the first petition was withdrawn in order to do bench hunting or for some other mala fide purpose.

20. We agree with the learned counsel for the appellant that although the Code of Civil Procedure does not strictly apply to proceedings under Section 25-O(1) of the Industrial Disputes Act, or other judicial or quasi-judicial proceedings under in any other Act, some of the general principles in the CPC may be applicable. For instance, even if Section 11 of the CPC does not in terms strictly apply because both the proceedings may not be suits, the general principle of res judicata may apply vide Pondicherry Khadi & Village Industries Board vs. P. Kulothangan and another 2004 (1) SCC 68. However, this does not mean that all provisions in the CPC will strictly apply to proceedings which are not suits.

21. Learned counsel for the appellant has relied on an observation in the decision of this Court in U.P. State Brassware Corporation Ltd. vs. Uday Narain Pandey 2006(1) SCC 479, in paragraph 38 of which it is stated:

"38. Order 7 Rule 7 of the Code of Civil Procedure confers powers upon the court to mould relief in a given situation. The provisions of the Code of Civil Procedure are applicable to the proceedings under the Industrial Disputes Act."

It may be noted that the observation in the aforesaid decision that the provisions of the CPC are applicable to proceedings under the Industrial Disputes Act was made in the context of Order 7 Rule 7 of the Code of Civil Procedure which confers powers upon the court to mould relief in a given situation. Hence, the aforesaid observation must be read in its proper context, and it cannot be interpreted to mean that all the provisions of the CPC will strictly apply to proceedings under the Industrial Disputes Act.

22. No doubt, Order XXIII Rule 1(4) CPC states that where the plaintiff withdraws a suit without permission of the court, he is precluded from instituting any fresh suit in respect of the same subject matter. However, in our opinion, this provision will apply only to suits. An application under Section 25-O(1) is not a suit, and hence, the

said provision will not apply to such an application."

(b) In the case of (Secretary to Government, Home Department, Chennai and another vs. V.H.Mohammed Haneefda and another), reported in 2005 (1) LLN 451, it has been held as follows:

"14. We are of the view that it is not as if that there was no delay at all in calling for explanation from the First Respondent. Though the delay is sought to be explained, we find at every spell there is long gap in pursuing the matter. For instance, there is long delay of Three years in obtaining the opinion of the Assistant Public Prosecutor and thereafter there was unexplained delay at every stage. The delay in issuance of the Charge Memo deprives the delinquent Officer the reasonable opportunity of putting forth his defence effective. We are of the opinion that in view of the delay in issuance of the Charge Memo, the Tribunal has rightly set aside the Charge Memo and the Impugned Order of punishment.

15. The timing in issuance of the Charge Memo is also to be taken note of. In or about 2000 2001, the name of the First Respondent was about to be considered for the select list for conferment of I.P. S. When his name was about to be considered, the file was processed and finally proposal was sent to DGP Office on 29.04.2001 imposing the impugned punishment of stoppage of increment for Two years without cumulative effect. The issuance of the Charge Memo in 1998 and processing the file with long gap and unexplained delay at every stretch and imposing the punishment in 2001 raises serious doubts.

(c) In the case of State of A.P. vs. N.Radhakishan, reported in (1998) 4 SCC 154, it is held as follows:-

"19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not

made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration."

(d) In an unreported decision in W.P.27892 of 2013, etc., batch cases (S.Ravichandran Vs. Corporation of Chennai), it has been held as follows:

"Quite apart from that fact, it appears to us that the charges were vague and it was difficult to meet the charges fairly by any accused. Evidence adduced was perfunctory and did not at all bring home the guilt of the accused.

From the dictum laid down in the above said judgment, it could be seen that if the charges are vague, it is difficult to meet out the charges by the delinquent. Unless the charges are specific, it is not possible for the delinquent to defend himself. Therefore, I am of the opinion, that the impugned charge memos are liable to be quashed not only on the ground of inordinate delay but also on the ground of vagueness.

Further, pursuant to the directions given by this Court, the buildings in question were inspected by the Superintending Engineer, Buildings Department on 17.10.2013 and a status report about the status and condition of the buildings was filed before this Court and the said report would show that the buildings in question are in sound condition.

Hence, for the foregoing reasons, I am of the opinion that the impugned charge memos dated 21.12.2012 issued against the petitioners are liable to be quashed and accordingly, quashed and all the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed."

(e) In 2000 (III) CTC 351, (B.Loganathan Vs. Union of India. rep. The secretary to government of union territory of pondicherry and another, it has been held as follows:-

"..... It would be impossible for the petitioner to remember the identity of witnesses whom he could summon to appear before the enquiring authority to support his case. Even If he could summon their presence, it would be a doubtful proposition whether they would be in a position to remember that happened more than 15 years back and help him in his defence. Further more, the petitioner may not be in a position to effectively cross-examine the witnesses to be examined on the side of the second respondent in support of the charges. Practically, it would be a doubtful proposition that either the prosecution witnesses or the defence witnesses would be in a position to remember the facts of the case and advance the case of either the department or the petitioner. Under these circumstances and on the facts and circumstances disclosed, I hold that the un-explained inordinate delay will constitute denial of reasonable opportunity to the petitioner to defend himself that it would amount to violation of principles of natural justice and as such, the impugned charge memo must be struck down on this ground alone. By weighing all the factors both for and against the petitioner/delinquent officer quashing the charge memo is just and proper in the circumstances.

13. Under these circumstances, the impugned charge memorandum dated 5.11.1997 is quashed and the second respondent is directed to consider the claim of the petitioner for promotion to the post of Senior Assistant de hors to the impugned charge memo and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. Writ Petition is allowed to the extent mentioned above. No costs. W.M.P.No.4641 of 1998 is closed."

(f) In 2005 (1) LLN 445, (Secretary to Government, Home Department, Chennai and another Vs. V.H.Mohammed Haneefa and

another), it has been held as follows:-

"22. We have carefully gone through the Circular. We fully agree with the tenor of the Circular and that any delay or slackness in the Investigation might prove fatal to the Prosecution in Crimes of women deaths. Though the learned Government Advocate has pointed out the Circular, he has not pointed out how there was slackness or unethics in the methods adopted by the First Respondent in the Investigative methods. We may also point out that upon completion of the formalities of the Investigation, P.W.14-Muthusamy, successor of the First Respondent has filed the Charge Sheet. Opinion was also obtained from the Public Prosecutor. Any lapses could have been brought to the notice then and there. It is also to be pointed out that there was no complaint from the Mother of the Deceased or from other source. In our considered view, such lapse in the Investigation cannot form the reasonable basis for Charge Memo particularly at a distant point of time. These aspects were rightly considered by the Tribunal. The conclusion of the Tribunal setting aside the Charge Memo and the consequential punishment are to be sustained.

23. While exercising the jurisdiction under Article 226 of the Constitution, High Court is not constituted as a Court of Appeal over the decision of the Tribunal. We are of the view that the decision of the Tribunal is the result of proper assessment of all the relevant factors. In our considered view, this is not a fit case for issuance of Writ of Certiorari.

24. For the reasons stated above, we are not inclined to interfere with the order passed by the Tamil Nadu Administrative Tribunal, Chennai made in O.A.No.7731 of 2001 (dated 03.07.2002) and this Writ Petition is dismissed. No costs."

(g). In 2005(6) SCC 636 (P.V.Mahadevan Vs. MD, T.N.Housing Board), it has been held as follows:-

" Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and

also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefit shall be disbursed within three months from this date. No costs."

53. We have heard the learned counsel for the parties and perused the available records.

54. Considering the importance involved in these Writ Petitions, though we have extensively discussed the facts and the subsequent events, at the risk of repetition, we are just referring the relevant facts and events for better appraisal of the facts involved in this case. To sum up these events, it is seen that during the period of Mr.S.R.Jangid, I.P.S., formerly Deputy Inspector General of Police, Chengalpattu Range, when the first respondent was working under him as the Superintendent of Police, Chengalpattu East District, a lot of allegations were foisted against the first respondent. The allegations were referred for a detailed enquiry to the Directorate of Vigilance and Anti-corruption not only against the first respondent but also four other junior officers, who had worked under him. The Directorate of Vigilance and Anti-Corruption has framed as many as 20 allegations against the first respondent. For some of the allegations levelled against the first respondent, the Directorate of Vigilance and Anti-Corruption had recommended to initiate disciplinary proceedings against him and for some, it was not.

55. The first petitioner, being the competent authority, has framed charges as per Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969. After certain correspondence between the petitioners and the first respondent, the first respondent approached the Central Administrative Tribunal and filed O.A.No.1200 of 2010 against the allegations levelled by the petitioners. The said O.A.No.1200 of 2010 was admitted and an order of interim stay was also granted on 07.10.2010 to the first respondent. While so, the said O.A.No.1200 of 2010 was withdrawn by the first respondent on 25.11.2011, without any liberty. Since the first respondent withdrew the application, the petitioners proceeded to initiate action against him. Therefore, the petitioners decided to appoint P.Kannappan,

I.P.S., the Inspector General of Police, Intelligence (Internal Security), Chennai, as an Inquiring Authority to inquire into the truth of the charges framed against him vide GO.Ms.No.741, Home (SC) Department, dated 25.09.2013. Aggrieved over the action of the petitioners, again, the first respondent filed two original applications, namely, O.A.Nos.1483 and 1484 of 2013 before the Tribunal. Those two applications were admitted and an order of interim stay was granted on 16.12.2013. Since the interim order granted by the Central Administrative Tribunal was in violative of Section 24 of the Administrative Tribunals Act, the petitioners filed W.P.Nos.32351 and 32352 of 2013 before this High Court.

56. This Court, in its common order, made in W.P.No.32351 of 2013 dated 03.12.2013, set aside the interim orders, dated 14.11.2013 with certain directions. Eventually, the Tribunal passed orders on 27.12.2013, granting interim relief to the first respondent with a direction to promote him to the next higher rank, should any DPC be held during the pendency of the applications, and also making it clear that the promotion, if any granted, will be subject to the outcome of the applications. As against the said interim order, dated 27.12.2013, the petitioners filed W.P.Nos.7318 and 7319 of 2014 before this Court, whereupon this Court quashed the said interim order of the Tribunal and directed the Tribunal to dispose of the main cases in Original applications within a time frame. Thereafter, the tribunal allowed the original applications in favour of the first respondent. Hence, the present writ petitions have been filed by the State.

57. The first respondent has filed a detailed counter affidavit making allegations against the second petitioner. The main allegations against the second petitioner is that there were sharp professional differences between the second petitioner and the first respondent. In the counter, it is important to note that an enquiry by the Directorate of Vigilance and Anti-Corruption as against Mr.Jangid, ADGP has been ordered in 2013 and the same is pending with regard to an illegal encroachment of Village pond by the then DIG in criminal league with the then Collector of Kancheepuram District upon a compliant given by the local villagers. The said professional differences eventually transformed into personal racour and personal vendetta by the then DIG who started initiating reports after reports against him in respect of almost same set of allegations with few additional embellishments here and there by assigning different para numbers to the same paras relating to the same year i.e.2002-2003. Some of them are remarks made by the second petitioner as listed out below:-

- (a) ''Snake in the grass - neither desirable nor reliable''
- (b) ''he is a pervert''
- (c) "a savagery and sadistic officer"
- (d) "a self aggrandizer"
- (e) "very sociable with undesirable elements and unsocial with civilized people"
- (f) "not fully dedicated duty"

- (g) "generally biased"
- (h) "does not pay attention to detail"
- (i) "cannot withstand pressure"
- (j) "biased and does not take principled stand"
- (k) "knows law only on letter"

58. However, some of the most celebrated professionals, with whom the first respondent had worked, namely, DGP Tr.Paramveer Singh, IPS (Special Director, CBI), DGP Tr.K.Vijaykumar, IPS, Tr.R.N.Savaani, IPS (ADGP), Tr.K.Radhakrishnan, IPS (ADGP), Tr.Tamilselvan, IPS (ADGP), Tr.Narendarpal Singh, IPS (DGP, CBCID), etc., have opined as follows:-

"very good", (year - DGP Tr.Natraj, IPS (Retd.))

- "bold officer with zeal to learn and sincere and hardworking" - overall rating is very good. (ADGP Tr.Savaani, IPS and ADGP Tr.Ramanujam, IPS)
- A smart, enthusiastic and knowledgeable youngster. Always willing to take responsibilities, hard working. He is an officer with a lot of promises for the future policing.
- Honesty, loyalty and high degree of professional integrity are the good qualities, no short coming. Originally and comprehensive. (ADGP Tr.SylendraBabu, IPS and ADGP Tr.D.Manoharan, IPS (Retd.))
- Very good, sincere, loyal, dependable and very hard working. An excellent officer with good intention to make the police very effective and razor-sharp in responding to the public needs. He will rise to occasion at any time (ADGP Tr.K.Radhakrishnan, IPS)
- A very energetic, sincere, enthusiastic, hard working and courageous officer. An asset to the Department. (DGP Tr.Paramveer Singh, IPS, Special Director, CBI)
- OUTSTANDING. He is very reliable, bold, effective and track oriented. He can be relied upon to handle tough law and order situations. (ADGP Tr.S.K.Dogra, IPS)
- OUTSTANDING. He is a highly reliable, daringly bold, effectively enforcing and task oriented professional. He can be relied upon to handle any toughest law and other situation in the District. He was individually instrumental for carrying out all of my orders in the notorious gangster Asaithambi operation on 31.07.1996. Overall performance : Outstanding. (ADGP Tr.G.Nanchilkumaran, IPS (Retd.))

- OUTSTANDING. An active, energetic, hard working and sincere officer. As an integral part of the "operation team" formed to apprehend the accused concerned in the Coimbatore serial blast cases, has boldly and courageously spear-headed as well as participated in various operations done both within and outside the State conducted amidst several odds, facing severe threat to life and has been responsible for the apprehension of a considerable number of accused arrested in this case. Was instrumental for the apprehension and interrogation of prime accused Mohd. Ali Khan @ Kutty who had given the major breakthrough in the case. Has also done a commendable job in the investigation of the case, in helping to unearth the conspiracy and in the charge sheeting of the case. (IGP - Tr. Thamarai Kannan, IPS, DGP Tr. Paramveer Singh, IPS Special Director - CBI)
- Outstanding. What is worthy of recording a crucial fact respecting a transaction that took place during a high level conference presided by the then Chief Minister and attended by hundreds of IPS and IAS and other officers. During the conference, the IGP, Tr. Tamil Selvan, IPS had opted to openly urge all the District Superintendents of Police present in the conference to emulate SP Tr. Ponn Manickavel in respect of the my commitment to public service with special reference to my Public Grievances Redressal meetings. The Reporting Officer Mr. Jangid, the then DIG was himself present in the conference. (ADGP Tr. Tamil Selvan IPS, DGP Tr. Narendrapal Singh, IPS and ADGP Tr. K.V.S. Moorthy, IPS, (Retd.)).
- A very good officer. His strength is his courage to face the challenges. His attitude towards weaker sections is also good. I would revise his grading higher because of the work output. Nearly 600 women SIs were trained in batches of around 80 under his direct supervision, and over 2000 police constables were trained under his aegis. He might have lacked a bit in interpersonal relations, but he was very tough on himself as also on his junior colleagues.
- I have mentioned his shortcomings on lack of finesse in inter-personal dealings, but for which he would have got 10/10 already. But he kept himself fighting fit and toured the State extensively with the huge task of forming the District Jungle Force under his supervision. He has stirred up the STF, and kept it fighting fit. I have also commented in this officer's observation in Part-IV on the State Homicide Bureau which shows his high professional thinking. He is very thorough in Rules and Regulations. Hence, I revise his overall grading as 9.6 out of 10 (DGP Tr. K. Vijayakumar, IPS (Retd.)).

59. It is further seen that under all the 27 senior IPS officers (except the then DIG Mr.Jangid), he has had a meritorious service career and earned excellent outstanding grading and assessment of his Superiors. Apart from that, he had personally investigated an offence of double murder of a lactating mother and 13 months old baby following rape of the lactating mother followed by destruction of crime scene evidence with a view to project a false theory of dowry suicide by dousing the two murdered corpus-delicti with kerosene and set them ablaze during 2003. This case was initially investigated defectively as a case of dowry suicide by the DSP and the Sub-Divisional Executive Magistrate being a case of death of a married woman.

60. It was he, who on the fourth day, detected the offence of murder and took it for his personal investigation because the death of the 13 month old baby took place on 15th August, being the Independence day of the country. It took nearly 10 years for him to bring the ultimate justice to the victims of this double murder followed by rape through the judgment of the Hon'ble Supreme Court of India. Getting the encomium of the Hon'ble Supreme Court of India is the rarest of rare accomplishment for any IPS officer in the country including him. His personal investigation relates to 2003, which is relevant to the period of the articles of charges of the impugned charge letter, whereas, the then DIG, a police bureaucrat, had adversely remarked against him in his ACR 2002-2003 that "he knows law only in letter" and that "he is a pervert", "he is a snake in the grass" and thereby the then DIG had manifested his inner and deep-seated malice against him.

61. It is seen that except for one year, i.e. 2002-2003 under the then DIG, he consistently earned outstanding ratings with glowing observations in respect of his integrity profile, performance profile and productivity profile through more than 40 senior IPS officers in 22 years. He could not go along with and failed to co-operate with the then DIG on the ground of conflict of interest relating to values like anti-corruption pursuit against the dangerous and corrupt lot in Khaki, neutralism, service to the cause of poor victims of crime, etc. This is one of the chief backdrops for the grave bias and rancorous prejudice and hatred harboured by the then DIG against him. No action could be taken against him in the first enquiry (C.No.156/Camp/DIG/CHR/2002, dated 06.08.2002) during 2002 and the second State CBCID enquiry (C.No.64/DIG/CHENGAI/CAMP/2003, dated 09.03.2003) during 2003 even after 11 years.

62. Upon frustration due to no action against him from the State CBCID enquiry during 2002 and 2003, the then DIG did not hesitate to raise serious baseless allegations against the CBCID that CBCID was protecting him and that it had threatened the witnesses including Inspectors from deposing against him. The hatred and malice of the then DIG became more acute and severe only after he

telegraphed the interim order of the Hon'ble Supreme Court on 26.09.2005 restraining his enquiry jurisdiction against him in that case and such order of the Hon'ble Supreme Court became his abomination. The then DIG successfully managed to have the DVAC enquiry ordered against him during 2006 and the DVAC enquiry continued till 2009 under his secret supervision assisted by the enquiry officer of the DVAC. And again after coming to know secretly from the Inspector/Enquiry Officer, DVAC, who was his Special Branch Sub-Inspector when the then DIG was his Superintendent of Police, Cuddalore District that the outcome of the enquiry would not be favourable to the expectations of the then DIG, he prospectively managed to have the fourth enquiry against him in respect of same set of allegations with few embroidered embellishments ordered by him through the Central Administrative Tribunal relating to the same year 2002-2003 against him.

63. No one can deny the fact that the date of order for detailed enquiry by DVAC during 2006 and date of order for enquiry by IGP, Crime Tr.Thukkaiyandi during 2008 are eye-catching only after the order of the Hon'ble Supreme Court on 26.09.2005 telegraphed by him to the then DIG forbidding his enquiry jurisdiction against him. During 2002, the then DIG initiated his first report against him levelling serious allegations vide his report in C.No.156/Camp/DIG/CHR.2002 dated 06.08.2002 to the then DGP that he was changing the posting of Inspectors and DSP unauthorizedly and penalizing the officers and requested disciplinary action against him. Till date, no action was initiated against him either by the Government or by the then DGP. During 2004, the then DIG instigated Mr.A.Manivannan, a compulsorily retired Police Constable, arrested at Bangalore and jailed by him in connection with his crime in 8 criminal cases, to forward a petition against him with false and fabricated facts and this fact has been admitted by him in his reply affidavit in O.A.No.1200 of 2010, dated 05.04.2011. The said Police Constable A.Manivannan committed series of offences against innocent public and offences relating to distillation of illicit-arrack in the then Chengai (East) District when he was its Superintendent of Police. Eight criminal cases were registered against him in connection with his offences against the public and the police. It could reasonably form the basis for the evidence of his bad character and criminal misconduct.

64. The then DIG did not rest with his report to the DVAC but sought to obtain the development in the DVAC enquiry by having recourse through RTI Act. But the learned Director had turned down his RTI request, which shows the evidence that the then DIG would always relentlessly pursue his bad intention and fiendish design against him. Upon secret feedback that action would not be taken against him in a way expected by him from the DVAC enquiry officer, the then DIG managed to have the enquiry by the IGP, Crime Tr.Thukkaiyandi and subsequently by the IGP, EOW Tr.Vijayakumar ordered during 2008 by him through the Director General of Police against him relating to the same period 2002-2003 with few

embroidered additional allegations. The fact of the then DIG requesting for DVAC enquiry against him by levelling baseless serious allegations against the State CBCID has found a specific place in his report dated 09.03.2003 addressed to the Registrar, Central Administrative Tribunal.

65. He came to know that the Central Administrative Tribunal on 06.10.2008 had directed the Inspector General of Police (Crime), ThiruThukkaiyandi, I.P.S., to conduct an enquiry in respect of the same set of allegations in 2002, i.e. 2600 days before when he was Superintendent of Police, Chengai (East) District. However, he had straightaway directed him to conduct enquiry and to send the prepared draft charge letter, with statement of imputations, list of witnesses, list of documents and a soft copy irrespective of the outcome of the final findings of such enquiry.

66. Coming to know about this, he made a detailed representation on 14.11.2008 to the Director General of Police to stop the enquiry pursuant to his memo by bringing to his notice that the allegations listed out in his memorandum are not new but very old allegations similar to those levelled against him in the year 2002-2003, which in turn were already enquiry by the State CBCID twice for which there was no action against him even till today. It was also brought to the notice of the Director General of Police that the allegations are also one and the same to those enquired by the DVAC in the year 2006, wherein, he had explained to all those allegations in writing to the Director, DVAC during 2007 itself.

67. The crucial fact that he did not share cordial professional relationship with the then DIG, who is directly instrumental for the issuance of the two memoranda dated 06.10.2008 and 02.02.2009, was also highlighted to the second petitioner in C.No.01/CMT/XIV-BN/Camp/2008 dated 14.11.2008, because the then DIG could manage to have the order for DVAC

enquiry and enquiry by IGP, Crime Tr.Thukkaiyandi and subsequently by IGP, EOW Tr.Vijaykumar only after 2006, i.e., after the change of Government during 2006.

68. He was under the bonafide belief that the second petitioner would stop and drop the enquiry pursuant to memorandum dated 06.10.2008, since there existed valid grounds for dropping the enquiry, as made available in his representation to the second petitioner. However, by a letter dated 02.02.2009, the second petitioner directed Mr.Vijayakumar, IGP, EOW to conduct the enquiry into allegations as set out in the memorandum dated 06.10.2008 and to send the prepared draft charge letter along with statement of imputations, list of witnesses and list of documents irrespective of the outcome of the enquiry. The contents of the memorandum dated 02.02.2009 like the memorandum dated 06.10.2008 established the predetermined mindset and malicious aforethought of the second

petitioner.

69. In the meantime, a charge letter was issued against the first respondent under Rule 17 of the All India Services (Conduct) Rules, stating that he had approached this Court as well as the Supreme Court without obtaining prior sanction of the Government. He challenged the charge letter by way of O.A.No.808 of 2007 before the Tribunal, which held that he had not contravened Rule 17 of the concerned Rules, by approaching this Court as well as the Hon'ble Supreme Court for relief. It was also held that he cannot be held responsible for the publication of the news items, which purportedly caused embarrassment to the Government. The Tribunal finally concluded that the allegations made out in the charge memorandum do not constitute any misconduct. In such circumstances, the Tribunal quashed the charge memorandum in letter No.SC/6185-7/05 dated 19.06.2006 as being wholly illegal and unsustainable in law vide its order dated 25.11.2008 in O.A.No.808 of 2007. After this, two more charge letters had been issued against him based on the same and repeated reports of the then DIG. Upon frustration on the order of the learned Tribunal setting aside the charge letter as wholly illegal, the then DIG has managed to have an enquiry ordered by the second petitioner during 2008 through the IGP, Crime in respect of the same set of allegations with few more additional allegations here and there by erasing the para numbers with whitener and renumbering the para and have it xeroxed.

70. In such circumstances, the first respondent filed O.A.954 of 2009 before the tribunal, seeking to quash the charge memorandum issued by the second petitioner on 06.10.2008 and 02.02.2009. During pendency of the same, he moved a Miscellaneous Application No.463 of 2009, seeking an interim direction to include his name in the panel for promotion to the post of Deputy Inspector General of Police without reference to the Memorandum dated 06.10.2008 and 02.02.2009. Vide further order dated 20.11.2009, the Tribunal granted interim stay of all further proceedings pursuant to the Memorandums dated 06.10.2008 and 02.02.2009 issued by the second petitioner. However, on 11.06.2010, the second petitioner forwarded a charge letter in SC/4653-16/2009 dated 05.06.2010 framed against him under Rule 8 of the All India Services (Discipline and Appeals) Rules, 1969 with two articles of charge against him.

71. The charge letter was issued with a delay of 2555 days and was highly belated, as it relates to certain alleged incidents taken place in the year 2002-2003 i.e. 11 long years before. The Tribunal granted interim stay of the charge memorandum dated 05.06.2010 in O.A.No.1200 of 2010, which was periodically extended. While the first respondent was waiting for such orders from the petitioners, he received a letter from the petitioners asking him to submit his written statement of defence to the charge memorandum dated 05.06.2010 within a period of 15 days. A letter dated 20.03.2012 was issued by the second petitioner requesting him to acknowledge receipt of the Government letter dated 15.03.2012.

Immediately, he made a representation on 04.04.2012 to the first petitioner through the second petitioner, highlighting the truthful background, which led to the withdrawal of the two pending original applications. It was also highlighted that the allegations of two lapses of petty nature in the charge letter dated 05.06.2010 were in respect of transactions that took place as long as 3800 days before on the basis of the first report dated 09.03.2003 maliciously engineered by Mr.Jangid. It was also mentioned therein that few of the witnesses mentioned in the charge memorandum had retired and a few of them had expired and that he is seriously handicapped and may not be having a reasonable opportunity to defend himself inasmuch as the alleged incident took place almost 3800 days before. He however sought 60 days time to submit his written statement of defense.

72. There was no response to the said letter either permitting or not permitting the time sought for by him vide his representation dated 04.04.2012. All of a sudden after a gap of 540 days from the date of his representation dated 04.04.2012, the Government issued G.O.Ms.No.741 dated 25.09.2013, appointing an Enquiry Authority to proceed with the charge letter against him. On the same day, by G.O.Ms.No.742, the Enquiry Authority was delegated with powers to summon any person to appear before him or to produce any document or thing or any information in possession, the production of which in the opinion of the Enquiry Officer to conduct the enquiry initiated against him. He, upon taking legal advice, informed that the continuation of the proceedings in the charge memorandum is against law and filed O.A.No.1483 of 2013 before the Tribunal. After hearing the submissions made on his behalf, the Tribunal was pleased to grant the interim relief sought for by him vide its order dated 14.11.2013.

73. Aggrieved by the aforesaid order, the petitioners filed W.P.No.32351 of 2013 before this Court. On 03.12.2013, this Court set aside the interim order on the legal premise that no reasons have been recorded by the Tribunal while granting the interim relief and further remanded the matter back to the Tribunal for fresh consideration. The writ petitioners also filed their reply affidavit on 10.12.2013 and thereafter, elaborate submissions were made by both sides on the issue of interim relief. The Tribunal, by its order dated 27.12.2013, granted the interim relief of stay of the departmental proceedings initiated against him and also a direction to consider him for promotion to the next higher rank. Again, aggrieved by the aforesaid order, petitioners filed W.P.No.7318 of 2014 before this Court and this Court by its order dated 15.04.2013 disposed of the writ petition by giving a time bound direction for the Tribunal to dispose of the original applications on merits and in accordance with law. Further, it was made clear that the direction passed by the Tribunal to consider his case for promotion during the pendency of the applications cannot be sustained and that any promotion made on the recommendations of the DPC would be subject to the final orders to be passed by the Tribunal.

74. Finally, the Tribunal, by its detailed and reasoned order, allowed the original application and quashed the charge memorandums. Against the said orders, the present writ petitions have been preferred.

75. What could be emerged from the impugned order is, whether there was any delay on the part of the petitioners to initiate action and conclude proceedings against the first respondent ? Secondly, the learned Additional Advocate General would submit that the original application filed by the first respondent initially was withdrawn by the first respondent without liberty. When that being the position for the very same cause of action, could it be entertained or not? Therefore, in the present case, we are bound to answer the two grounds raised by the Advocate General as to (i) the delay in initiation of departmental proceedings and (ii) the withdrawal of original applications filed by the first respondent without liberty.

76. Let us now examine the first question as to the delay. For the happenings that took place in the year 2002-2003, the petitioners initiated action and concluded the proceedings, after a long period of time. In this regard, the Tribunal has discussed with umpteen number of judgments, about the dates and events. In this case, the timing in issuance of the charge memo is to be taken note of. When all the superior officers have appreciated the service of the first respondent in the Annual Confidential Report, imposing punishment on him after a long lapse of time and unexplained delay at every stretch raises serious doubts. Time and again, the Supreme Court has held that a delinquent employee has a right that disciplinary proceedings against him are to be concluded expeditiously and he should not be made to undergo mental agony and also monetary loss when the proceedings have been unnecessarily prolonged without any fault on the delinquent concerned. The protracted disciplinary proceedings against a Government employee should be avoided not only in the interest of Government employee but in the public interest and also in the interest of inspiring confidence in the minds of the Government employees. If the disciplinary proceedings are used as a tool for other than the purpose it was intended to, then the very purpose would get defeated and the honest officers will get dejected in the public service, even if they are able to overcome the judicial battle. Apart from that, it is a well settled law that any omission or commission in the bona fide discharge of quasi judicial functioning cannot form basis for initiation of disciplinary proceedings that too after a long delay of 11 years.

77. Further, there is no plausible explanation on the part of the petitioners for the undue delay in issuing the impugned charge memo after 11 years. If disciplinary proceedings are initiated with undue delay at whims and fancies of the authorities, certainly, it will give room for allegations of bias, malafides and misuse of power. More importantly, when the Government itself having chosen to expunge all the adverse remarks entered into by the then DIG against the first respondent, pertaining to the period in question, there is no valid reason at all to issue charge memos in respect of the said period, after 11 long years. It is trite to say that disciplinary proceedings must be initiated soon after the irregularities came to light and the same are completed without there being any delay. They cannot be initiated after a long lapse of time. It would not be fair to issue such charge memo. Such delay also makes the task of proving the charges difficult. If the delay is too long and unexplained, the court may well interfere and quash the charges.

78. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. It is not possible to lay down any predetermined principle applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated or not, according to us, each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and strike the balance.

79. It is always better both for the delinquent and for the State that the disciplinary proceedings are initiated at an appropriate stage and concluded within a reasonable time. Why we are emphasizing again and again as to the delay factor is that delayed issuance of charge memo deprives delinquent officer's reasonable opportunity of putting forth his defence effectively. It is true that there are certain decisions in support of the petitioners to the effect that delay alone should not be taken into consideration for quashing the charges in question. Whether a delay is too long or not, what prejudice would happen to the delinquent always depends upon the facts of the given case. According to us, the delay is a vital factor in this case. The facts and circumstances of the case, have to be examined, taking into consideration the gravity/magnitude of the charges levelled against the first respondent.

80. That apart, this Court also cannot lose sight of the fact that as many as 27 Senior I.P.S. officers have consistently recorded satisfaction as to the performance of the first respondent in the Annual Confidential Report except the second petitioner. The Annual Confidential Report is only to indicate the grey area where the concerned officer requires some kind of improvement. It is not to

settle the personal score between the officers concerned. But the second petitioner used the ACR of the first respondent as a tool to condemn his career prospectus and made wild and beastly remarks against the first respondent. A perusal of the records would make it clear that the charge memo in question has been issued at the behest of the second petitioner. Time and again, this Court as well as the Supreme Court has held that delay in issuing the charge memo will vitiate the same. If the charge memo is issued after a long period of time, as in the present case on hand, the delinquent may not be in a better position to defend himself, as it will be very difficult for the delinquent to collect the relevant documents to prove his innocence. Therefore, in our opinion, the first respondent is an outstanding officer throughout his career except during the period of Mr. Jangid.

81. At this juncture, it is necessary to discuss about the evidence of Mr. A. Manivannan, a compulsorily retired police constable also. As far as the version of Mr. A. Manivannan, a compulsorily retired police constable against the first respondent is concerned, though the Tribunal went into detail, we can say that the integrity of the said A. Manivannan is highly doubtful, as he is involved in many criminal cases. Thus, it is too difficult to rely upon his evidence and arrive at any conclusion on the basis of his evidence. Therefore, we have no hesitation to reject the version of A. Mannivannan, a compulsorily retired police officer.

82. When the charges are grave in nature and the delinquent is an I.P.S. Officer, we are at a loss to understand how it is possible for any delinquent to offer his explanation within ten working days, that too, when there is a huge delay of 3800 days in framing the charges against the said officer. We also fail to understand had the first respondent been given 60 days time as requested by him, what prejudice could have happened to the petitioners, when they took away 11 years to issue charge memo? Asking the first respondent to put forth his defence within 10 working days to the charges levelled against him in respect of the transactions that had taken place almost 11 years ago is truly and wholly unreasonable by all standards of justification. This gives us an impression that in a hurried manner, proceedings after proceedings have been initiated against the first respondent. Even assuming for a moment that 60 days time is given, there may be two consequences. On the one hand, it is doubtful that both the delinquent and the authority would remember the incident which had taken place 11 years ago. Importantly, the delinquent may not be in a position to effectively cross-examine the witnesses for the reason that in the case on hand some of the them had retired and some of them even died. Practically, it would be a doubtful proposition that either the prosecution witnesses or the defence witnesses would be in a position to remember the facts of the case and advance the case of either the department or the petitioner. So, it really disturbs us. Though the delay is sought to be explained, we are not satisfied the way in which the delay is sought to be justified. Therefore, the charges framed against the delinquent

officer lack merit. On this score alone, we come to the conclusion that there is monumental irregularity and illegality in issuing the impugned charge memos against the first respondent.

83. This Court would like to point out the following judgments in order to arrive at just and fair conclusion:

(a) In the case of State of Punjab Vs. Chaman Lal Goyal, 1995 (2) SCC 570, wherein, it has been held as follows:-

" 13. Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the Rules and practice normally followed in such cases may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex-parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped.

14. The High Court has relied upon the decision of this Court in State of Madhya Pradesh v. Bani Singh & Anr. (1990 (Suppl.) S.C.C.738) on the question of delay. That was a case where the charges were served and disciplinary enquiry sought to be initiated after a lapse of twelve years from the alleged irregularities. From the report of the judgment, the nature of the charges concerned therein also do not appear. We do not know whether the charges there were grave as in this case. Probably, they were not. There is another distinguishing feature in the case before us: by the date of the judgment of High Court, the major part of the enquiry was over. This is also a circumstance going into the scales while weighing the factors for and against. As stated hereinabove, wherever delay is put forward as

a ground for quashing the charges, the court has to weigh all the factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In the circumstances, the principle of the said decision cannot help the respondent."

(b) One of us (Justice.V.Dhanapalan), had an occasion to consider the question of delay in initiation of proceedings, in the case of N.P.K.S.Sheik Abdullah vs. The State of Tamil Nadu, rep. By its Secretary and others (W.P.(MD) No.12517 of 2009), dated 23.02.2011, wherein, I have held as follows:-

"13. It is the cardinal principle that it is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest termination after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. The protracted disciplinary proceedings against the Government employee should be avoided not only in the interest of the Government employee but in public interest and also in the interest of inspiring confidence in the minds of the Government employees. Apart from that, it is well settled law that any omission or commission in the bona fide discharge of quasi judicial function cannot form basis for initiation of disciplinary proceedings with an inordinate delay of seven years. Since the petitioner effected patta transfer under Section 10 of the Tamil Nadu Patta Pass Book Act, 1983, (for short 'the Act') the power exercised by the quasi judicial authority under the statute cannot be questioned by way of initiation of disciplinary proceedings and the same could be set aside in the manner provided under the Act by initiating appropriate proceedings at an appropriate stage and conclude the same within a reasonable time.

14. Normally, the disciplinary proceedings should be allowed to take their course as per the relevant rules, but then the delay defeats justice, delay

causes prejudice to the charged officer, unless it can be shown that he is to be blamed for the delay or where there is proper explanation for the delay in conducting disciplinary proceedings. In this case, the respondent has not explained the reason as to why there was an inordinate delay for the issuance of the charge dated 03.11.2009. Therefore, the delay caused in initiating the disciplinary proceedings for more than seven years appears to be inordinate and unexplained.

15. It is pertinent to note that in similar circumstances this Court considered a Writ Petition in W.P.No.22369 of 2009, dated 16.12.2009, in the case of K.Vijhay Saai Vs. State of Tamil Nadu, rep.by its Secretary to Government, Revenue Department, Secretariat, Chennai-600 009 and others, wherein, this Court after analysing all the relevant decisions of the Supreme Court as well as this Court, ultimately held that the inordinate and unexplained delay will defeat the justice at the threshold and the charges framed therein were quashed. The view elucidated by this Court was also affirmed by the Division Bench of this Court in the case reported in in W.A.No.1669 of 2010, dated 29.09.2010 in the case of State of Tamil Nadu, rep.by its Secretary to Government, Revenue Department, Secretariat, Chennai-600 009 and others Vs K.Vijhay Saai and as such, the impugned charge memo cannot be sustained in the eye of law and the same is liable to be quashed. Taking into account of the fact that no disciplinary proceedings pending against the petitioner as on the crucial date viz., 01.01.2009 and as such, by issue of the impugned charge memo, the third respondent has deprived the petitioner from being included in the panel of Tahsildar fit for promotion to the post of Deputy Collector.

16. For the foregoing reasons and the discussions made above, I am of the considered view that the charge memo issued is vitiated on the ground that there was unexplained and unsatisfactory delay for initiating the proceedings for the incident which took place in the year 2002 and the charge memo came to be issued on 03.11.2009. Therefore, in order to meet the ends of justice, it is absolutely necessary to quash the charge memo issued against the petitioner and accordingly, it is quashed.

17. The writ petition is allowed with a direction to the respondents to include the petitioner name in the panel of Tahsildar fit for promotion to the post of Deputy Collectors for the year 2009 and promote to the said post. Consequently, the connected miscellaneous petitions are also closed. No costs."

84. Therefore, by weighing all the factors both for and against the first respondent/delinquent officer, in view of the foregoing reasons discussed above, we hold that the un-explained inordinate delay will constitute denial of reasonable opportunity to the first respondent to defend himself that it would amount to violation of principles of natural justice and as such, the impugned charge memo must be struck down on this ground alone. While exercising the jurisdiction under Article 226 of the Constitution, High Court is not constituted as a Court of Appeal over the decision of the Tribunal. The decision of the Tribunal quashing the charge memos against the first respondent is the result of proper assessment of all the relevant factors. Therefore, the order passed by the Tribunal was in furtherance of justice. Thus, we come to the conclusion that the Tribunal has rightly quashed the charges, which according to us, is just and proper in the facts and circumstances of the case.

85. Coming to the next contention of the learned Advocate General that the first respondent has withdrawn the original applications without getting any liberty from the Tribunal and again he has approached for the very same cause of action, no doubt, he did so on the advice of his superiors that his case would be considered after withdrawing the case. That apart, he was under the bona fide belief that the second petitioner would drop the enquiry pursuant to the memorandum dated 06.10.2008, since there existed valid grounds for dropping the enquiry, as made available in his representation to the second petitioner. However, by a letter dated 02.02.2009, the second petitioner directed to conduct enquiry into the allegations set out in the memorandum dated 06.10.2008 and to send a draft charge letter along with statement of imputations, list of witnesses and list of documents irrespective of the outcome of the enquiry. The contents of the memorandum dated 02.02.2009, like the memorandum dated 06.10.2008, establishes the predetermined mindset and malice aforethought of the second petitioner. In this regard, the learned Advocate General placed reliance on a judgment reported in Panicker's case cited supra as well as other judgments also. In fact, a perusal of the voluminous documents would make crystal clear that there is no necessity for the delinquent, namely, the first respondent, to withdraw the Original Applications filed by him against the petitioners when stay was operating against the petitioners. Though we are not heavily relying upon a letter dated 04.04.2012, we could infer from the letter dated 04.04.2012 that on oral assurance by the then Principal Secretary to Government, Home Department, he withdrew the applications with a bona fide belief that the charges against him would be withdrawn. However, contrary to such assurance, the impugned charge has not been dropped. Therefore, such an action is nothing but a mala fide intention engineered by the second petitioner. The said aspect is more strengthened, when the second petitioner sought information as to the development of the case foisted against the first respondent. We also take note of the fact that once the application is withdrawn without liberty being granted by the Tribunal, normally, the applicant is precluded from

filing any such application whatsoever, challenging the very same cause of action. However, we would like to emphasise the fact that we cannot make any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. In this case, we feel that with a bona fide belief, the first respondent withdrew the O.As. Therefore, it is necessary to reproduce the letter dated 04.04.2012, which reads as follows:-

"From

To

A.G.Ponn Manickavel,
D.I.G.I.W.CID.,
Government

Thiru.R.Rajagopal, I.A.S.
Principal Secretary to Chennai.
Home Department,
Secretariat, Chennai-9.

Thru' The Director General of Police, Tamil Nadu
Lr.No.10/DIG/IWCID/2012, dated 04.04.2012

Sub: Extension of time beyond 10 working days is requested on just and reasonable grounds since the said transactions in question (subject matter of charge letter) had taken place almost 3,800 days before - Reg.

Ref: 1.Rc.No.140328/GB 4(2)/2010, dated
20.03.2012

2.Letter No.HSC.5/214-1/2012, Home (SC)
Dept, dated 15.03.2012

It is respectfully informed that the receipt of the letter No.HSC.5/21401/2012, Home (SC) Dept., received on 22.03.2012 is hereby acknowledged.

2. It is again respectfully informed that this charge letter was framed by the erstwhile Government and not by this Government in respect of a transaction taken place not one or two years before but almost 10 ½ years before (more than 3800 days). Hence, it is almost impossible for any person of even outstanding efficiency to collect relevance records and registers relating to this charge letter and submit has written statement of defence within 10 working days and hence, the reason for my request for extension of time i.e.60 days.

3. In this regard I am duty bound to place on record certain truthful facts for your information. During the month of November,2011, this Government has given orders to the then Principal Secretary to Government, Home Department Thiru.Rameshram Mishra, IAS., to withdraw this charge letter who on hearing this specific order of this Government, quickly phone-contacted me on the same day informing such decision of

the Government.

4. A few days later, the then Principal Secretary (Home) again phone-contacted me and requested withdrawal of the two O.As (O.A.No.1200/2010 and O.A.No.954/2009), I had filed before the Central Administrative Tribunal so as to facilitate him to give effect to such oral orders of this government withdrawing this charge letter framed by the former Government.

5. A day later, the Special Secretary (Home) Thiru.P.Seetharaman, I.A.S. Phone contacted me and reminded about the request of the then Principal Secretary (Home) and requested for the withdrawal of the two O.A.s.

6. Now, I respectfully inform that against this backdrop of this sudden development of this government orally ordering for the withdrawal of this charge letter, I opted to and withdrew my two O.A.s pending before the Central Administrative Tribunal for almost three years.

7. In the absence of such new development made possible by the government and in the absence of such requests from the then Principal Secretary (Home), the question of me withdrawing the two O.As. is inconceivable at my end. At the same time it is worth informing that in the absence of such orders from this Government, the question of the then Principal Secretary (Home) requesting to withdraw the two O.As is also inconceivable. These facts and circumstances may kindly be verified.

8. Hence, against this backdrop, I request the benign Principal Secretary to Home Dept., to kindly have a word with the Government before further proceeding on this charge letter since such oral order to withdraw the charge letter was given by the Supreme authority in the State to the then Principal Secretary to Government (Home) Thiru.Rameshram Mishra, I.A.S.

9. It is worth reporting that this charge letter was framed by the former government in respect of a transaction taken place 3800 days before this day based on the report engineered by Tr.Jangid, ADGP in C.No.63/DIG/Chengai/Camp/03 dated 09.03.2003 in view of his thick association with the former Government.

10. Another justification for my request is as follows. The author of such report based on which the charge letter had emanated. The author of such report based on which the charge letter had emanated, the then DIG. Tr.Jangid had managed to stay during the entire five years tenure of the former government in the same Chengai East area for two years as Additional Commissioner of Police and COP, Sub-urban for three years and prospectively succeeded in systematic

decimation of evidence and records which would speak unimpeachably in proof of my stand. Hence there is every justification in my request for extension of time for 60 days to submit my written statement of defense to this 10 ½ years old charge letter.

11. It is worth considering that even in Capital Crime cases entailing death or life sentence, for filing charge sheet there is time limit procedurally mandated by law. It is 90 days and not 3800 days as is being characterised by this charge letter. If charge sheet is not filed before the Committal court within 90 days in all Capital Crimes, such failure would be called as "DEFAULT OF PROSECUTION" and the crime doers are legally entitled for automatic bail and the concerned Court would record such order as "BAIL ORDERED DUE TO DEFAULT OF PROSECUTION" to file the charge sheet / final report without 90 days.

12. As such for framing a charge letter like this relating to a delinquency (not crime proscribed by law) the former government taking as long as 3800 days is truly and wholly unreasonable by all standards of justification.

13. There cannot be two sets of rules regarding same set of situation for two agencies. For framing charge letter there was a delay of a period of 3800 days and to explain to the same charge, there is only 10 working days made permissible by this letter cited above. This itself constitute irregularity of grave magnitude on the part of the former government. Considering this case of irregularity of grave magnitude with impunity and again request this government to immediately interfere with this ill-reasoned charge letter of the former government and strike it off as essentially illegal and procedurally irregular. The charge letter not only lacks merits but lacks the truth and hence it is against God since truth is tantamount to God.

14. Besides, a few of the principal witnesses had retired, few of them dies and hence I am at a serious handicap to explain to this charge letter in respect of the transactions that had place almost 3800 days before within 10 working days as desired in this letter. Hence the reason for my extraordinary request for extension of time for 60 days before the Ld.Principal Secretary, Home Dept., in view of the above explained seriously handicapping extraordinary circumstances.

15. It is my duty to inform the Lt.Principal Secretary to Govt., Home Department that I have been prospectively fighting against this illegal charge letter authored by the former government for almost three years in the Central Administrative Tribunal and

obtained STAY which was in force till I withdrew O.A. at the request of the then Principal Secretary to Government, Home Department. Now I am at a serious handicap. This requires to be justly considered by the Ld.Principal Secretary to Government, Home Department.

16.This charge letter framed by the former Government being truly and wholly false in all its substantial facts, I am duty bound to forcibly deny even before I submit my written statement. I respectfully request the Ld.Principal Secretary to Government, Home Department to consider my just and extraordinary request on the grounds of rule of reason and rule of justice and permit me 60 days for submitting my written statement of defense and to have a word with the government before proceeding further in this illegal and procedurally irregular charge letter and also to share a word with the then Principal Secretary to Government, (Home) Thiru.Rameshram Mishra, I.A.S. And the Special Secretary (Home) Thiru.P.Seetharaman I.A.S. to ascertain the truth relating to such oral order of this government ordering to withdraw this charge letter.

17.I request the benign Principal Secretary to Government, Home Department to consider my this special request permitting me to avail 60 days to submit my written statement of defense."

86. That apart, the integrity and sincerity of the officer is more relevant in this case. Though there was a concurring judgment of a Division Bench of this Court in Criminal Appeal No.792 of 2007, Mr.Justice.R.Regupathi expressed his own views about the first respondent. From the said judgment, we could see that in view of the gravity of the crime involved in the said Criminal Appeal, the first respondent himself took up the task and conducted further investigation of that case. It is because of the perspicacity and strenuous efforts of the Investigating Officers in unearthing the truth, the appellant in the said appeal was brought to book, or else a guile and cunning person like the appellant in the said appeal would have definitely slipped the net. With the clue of intelligence available, the first respondent, vested with all skills of investigation and commitment to the job entrusted with, succeeded in chasing the real culprit. Even if there was a minor lapse or deviation or side-tracking in the course of investigation, due to the cunningness of the accused, the crime committed by him would have gone unnoticed. It is only because of the wakeful investigation by the D.S.P and the S.P., the truth came to surface. Hence, such officer has to be encouraged in all possible ways. Last but not the least, not only this High Court but also, the high pedestal of the judiciary, namely, the Supreme Court of India, where, the then Chief Justice of Justice (P.Sathasivam,J) has recorded in his findings that inspite of being the Head of the District Police Force, keeping in view the importance and complicity of the crime, he personally

investigated the matter and brought all the relevant and acceptable materials before the Court of law. Therefore, they recorded the appreciation to the team headed by Mr.A.G.Ponn Manickavel for their tireless investigation in presenting the truth before the Majesty of Law. When such was the performance of the first respondent and his 19 years track record of performance profile and integrity profile, the second petitioner has unnecessarily recorded malicious remarks in the Annual Confidential Report of the first respondent, which according to us, is uncalled for. At this juncture, it is pertinent to point out that the then DIG was not the only officer with whom he worked, (Mr.Jangid) but he worked under 27 other Senior IPS officers of whom, some of the most celebrated professionals are DGP Tr.Paramveer Singh, IPS (Special Director, CBI), DGP Tr.K.Vijaykumar, IPS, Tr.R.N.Savaani, IPS (ADGP), Tr.K.Radhakrishnan, IPS (ADGP), Tr.Tamilselvan, IPS (ADGP), Tr.Narenderpal Singh, IPS (DGP, CBCID), etc. At the risk of repetition, some of the remarks given by the most celebrated professions are extracted below since it forms basis of quashing the charge memos issued by the petitioners:

- "above-board", (year - officers)
- "honest"
- "absolute"
- "beyond reproach"
- "impeccably rectitudinal and beyond reproach"
- "beyond doubt"

87. Before the Tribunal, it was claimed by the first respondent that his service was very good throughout his career, except during the period of Mr.Jangid. For the sake of convenience and better appraisal of the facts, it is just reproduced below:

S.No	Name & Designation of the officer	Integrity profile	Personality and performance profile: OVER ALL ASSESSMENT
1.	Tr.V.Balachandran IPS.,	He is above Board	VERY GOOD
2.	Mr.Jaffer Sait, IPS., IGP		GOOD
3.	Tr.R.Natraj IPS DGP		VERY GOOD
4.	Tr.R.N.Sawni IPS ADGP/Joint Director, CBI	Honest	A very bold officer with zeal to learn. He is sincere and hard working
5.	Tr.K.Ramanujam IPS ADGP		Overall rating is very good.

6	Tr.S.Ramanathan IPS IGP		A smart enthusiastic and knowledgeable youngster. Always willing to take responsibilities- hard working. He is an officer with a lot of promises for the future policing.
7.	Tmt.Thilakavathi IPS ADGP	Very good	Overall rating: Very good
8.	Tr.C.Sylendra Babu IPS IGP	Absolute	Honesty, loyalty and high degree of professional integrity are the good qualities, no short coming. Originally and comprehensive. Overall rating is excellent.
9.	Tr.D.Manoharan, IPS (Retired)		
10.	Tr.K.Radhakrishnan, IPS ADGP		Very good, sincere, loyal dependable and very hardworking. An excellent officer with good intention to make the police very effective and razor sharp in responding to the public needs. He will rise to occasion at any time.
11.	Tr.Pramvir Sing, IPS Joint Director CBI, New Delhi	Beyond reproach.	A very energetic, sincere, enthusiastic, hard working and courageous officer. An asset to the Department.

12.	Tr.S.K.Dogra IPS ADGP	Very good	OUTSTANDING. He is very reliable, bold, effective and track oriented. He can be relied upon to handle tough law and order situations.
13.	Tr.P.Thangarajan, IPS ADGP (Retired)		
14.	Dr.C.K.Gandhirajan, IPS IGP	Impeccably rectitudinal and beyond reproach.	OUTSTANDING. He is a highly reliable, daringly bold, effectively enforcing and task oriented professional. He can be relied upon to handle any toughest law and other situation in the District. He was individually instrumental for carrying out all of my orders in the notorious gangster Asaithambi operation on 31.07.1996.
15.	Tr.G.Nanchil Kumaran, IPS ADGP. Retd.		Overall performance : Outstanding.
16.	Tr.C.V.Rao, IPS IGP	Certified	Hardworking and sincere OUTSTANDING:
17.	Tr.G.Nanchil Kumaran, IPS ADGP		This officer is an outstanding type. His hardwork, initiative, willingness to take up challenging tasks make him an OUTSTANDING OFFICER.

18.	Tr. Thamaraikannan, IPS, DGP Tr.Paramveer Singh, IPS Special Director - CBI)		OUTSTANDING An active, energetic, hard working and sincere officer. As an integral part of the "operation team" formed to apprehend the accused concerned in the Coimbatore serial blast cases, has boldly and courageously spear-headed as well as participated in various operations done both within and outside the State conducted amidst several odds, facing severe threat to life and has been responsible for the apprehension of a considerable number of accused arrested in this case. Was instrumental for the apprehension and interrogation of prime accused Mohd. Ali Khan @ Kutty who had given the major breakthrough in the case. Has also done a commendable job in the investigation of the case, in helping to unearth the conspiracy and in the charge sheeting of the case.
19.	Tr.P.Thangarjan, IPS ADGP (Retired)		
20.	Tr.Paramveer Singh IPS., DGP & Special Director		
21.	Mr.Jangid, DIG	Adverse	21 Adverse remarks.

22.	Tr.Subramaniam, ADGP, Retd,	Did not agree	Did not agree with the adverse remarks of Mr.Jangid
23.	Tr.Natraj DGP, Retd	Did not agree	Did not agree with the adverse remarks of Mr.Jangid.
24.	Tr.Tamilselvan, IPS, IGP	Outstanding: What is worthy of recording a crucial fact respecting a transaction that took place during a high level conference presided by the then Chief Minister and attended by hundreds of IPS and IAS and other officers. During the conference, the IGP, Tr.Tamilselvan, IPS had opted to openly urge all the District Superintendents of Police present in the conference to emulate SP Tr.Ponn Manickavel in respect of the my commitment to public service with special reference to my Public Grievances Redressal meetings. The Reporting Officer Mr.Jangid, the then DIG was himself present in the conference.	
25.	Tr.Narendrapal Singh, IPS and ADGP		
26.	Tr.K.V.S.Moorthy, ADGP, (Retd.)).		
27.	Tr.Alexander Mohan, IPS., IGP		A Very good officer. His strength is his courage to face the challenges. His attitude towards weaker sections is also good.

28.	Tr.Vijayakumar, IPS DGP	I would revise his grading higher because of the work output. Nearly 600 women SIs were trained in batches of around 80 under his direct supervision, and over 2000 police constables were trained under his aegis. He might have lacked a bit in interpersonal relations, but he was very tough on himself as also on his junior colleagues. I have mentioned his shortcomings on lack of finesse in inter-personal dealings, but for which he would have got 10/10 already. But he kept himself fighting fit and toured the State extensively with the huge task of forming the District Jungle Force under his supervision. He has stirred up the STF, and kept it fighting fit. I have also commenced in this officer's observation in Part-IV on the State Homicide Bureau which shows his high professional thinking. He is very thorough in Rules and regulations. Hence, I revise his overall grading as 9.6 out of 10.
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88. In spite of the opinion of Senior Officers about the performance of the first respondent, as shown in the above tabular column, it was simply denied by the petitioners, without any supporting documents and they could not place contrary materials before this Court. Further, though the legal position with regard to withdrawal of the Original applications filed by the first respondent is a matter for discussion before the Tribunal, it has not been discussed in depth, and therefore, this issue requires reconsideration. But, we are of the firm opinion that it would lead to multiplicity of proceedings. In order to meet the ends of justice, since we are satisfied that there are infirmities as to the charges issued against the first respondent on the ground of delay as well as in other aspects, the contention of the first respondent has to be accepted and these Writ Petitions are liable to be dismissed.

89. In view of the above discussion at length, we conclude that there is no merit whatsoever in the contentions of the State and we have no hesitation in dismissing the Writ Petitions. Accordingly, we dismiss the Writ Petitions filed by the State. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssm/abe/dixit

To:

1. The Principal Secretary to Government,
Home (SC) Department,
Fort St.George, Secretariat,
Chennai - 600 009.
2. The Director General of Police,
Tamil Nadu, Chennai-600 004.
3. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.

1 CC to the Government Pleader SR NO 63803

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W.P.Nos.17012 & 17013 OF 2014

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