



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2016

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THE HON'BLE DR.JUSTICE S.VIMALA
and
THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.A.(MD)No. 1347 of 2016

K.S.Harikrishnan

...Appellant/ Petitioner

-vs-

1. State of Tamil Nadu,
Rep. by the Principal Secretary to Govt.,
Home (Police-IV A) Department,
Secretariat, Chennai-600 009.

2. Director General of Police,
DGP Office, Appellate Authority,
Chennai-600 004.

3. Deputy Inspector General of Police,
CID-Intelligence, Punishing Authority,
Chennai.

4. Commissioner of Police,
Tirunelveli City Police,
Tirunelveli.

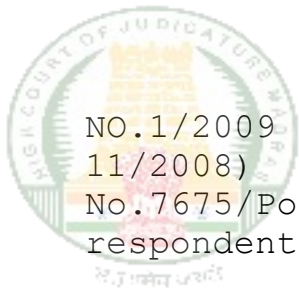
5. Assistant Commissioner of Police (L&O),
Enquiry Officer,
Tirunelveli City Police,
Tirunelveli.

... Respondents/Respondents

Prayer: Writ Appeal is filed under Clause 15 of Letter Patent against the order dated 18.08.2016 passed in W.P.(MD)No.14209 of 2014.

Prayer in WP(MD). 14209/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records relating to the impugned orders 1) findings of enquiry Officer Assistant Commissioner of Police, Tirunelveli 5th respondent herein in his Minute in PR No.11/2008 dated 10.1.2009 in respect of first charge. 2) order of punishment role dated 11.2.2009 punishment of reduction by two stages in time scale of pay for two years without cumulative effect in PR



NO.1/2009 SB CID Chennai (old NO.city Police Office Tirunelveli PR 11/2008) on the file of 3rd respondent herein . 3) letter No.7675/Pol.IVA/2010-9, dated 19.1.2012 issued by the 1st respondent to quash the same as illegal.

WEB COPY For Appellant : Mr.G.Thalaimutharasu
For Respondents : Mr.A.K.Baskara Pandian

O R D E R

The petitioner filed W.P.(MD)No.14209 of 2014, challenging the order of punishment, dated 11.02.2009, passed by the third respondent (punishing authority) (DIG/CID intelligence, Chennai), under which, the petitioner was awarded the punishment of "Reduction by Two Stages in the time scale of pay for two years without cumulative effect".

2.The writ petition was dismissed by this Court with the following two findings:-

(i)The Court exercising jurisdiction under Article 226 of the Constitution of India, is concerned only with the decision making process and it is not within the province of the Court to analyse the materials considered by the disciplinary authority once again and to take a different view.

(ii)The punishment awarded was proportionate to the charge framed against the petitioner and therefore, no interference was called for.

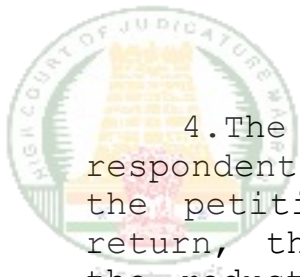
3.The dismissal of the writ petition is under challenge in this writ appeal, on the following grounds:-

(1)Even though, the Court is concerned with the decision making process, yet it has the power to interfere in the arbitrary exercise of power and to interfere with the non speaking orders.

(2)The provisions of Section 55-A of the Code of Criminal Procedure, which was brought into force by way of amendment on 31.12.2009, cannot be retrospectively applied to an occurrence, which had taken place on 27.04.2003.

(3)The charge memo is belated. The occurrence took place on 23.04.2003, but the charge memo was issued on 31.03.2008 i.e. after five long years and hence, it is un-sustainable.

(4)The appeal filed is well in time and therefore, the finding that the appeal is belated is unreasonable. The order of punishment was passed on 11.02.2009 by the third respondent. Appeal to Director General of Police (Intelligence Wing) was made on 03.03.2009. Therefore, the appeal is well within the period of 30 days as contemplated under Rule 9; as no orders were passed, the petitioner filed further Appeal to the second respondent (DGP) on 14.11.2009.



4. The first respondent returned the proposal sent by the third respondent for its acceptance on the punishment to be imposed on the petitioner to the second respondent and pursuant to the return, the second respondent has modified the order converting the reduction of wages into that of 'Censure'; when concurrence was sought by the second respondent from the first respondent, the first respondent has simply rejected the proposal on the ground that the Head of the Department, cannot reduce it when the Government has imposed higher punishment; this finding/reasoning by the first respondent is incorrect, as the Government never upheld the proposed punishment proposed by the third respondent, but only returned the proposal for punishment, at the time when it was submitted by third respondent.

5. The brief facts leading to the disciplinary proceedings;

5.1. The appellant arrested one Ramar at Chennai, allegedly involved in Crime No.569 of 2003 of Thatchanallur Police Station registered under Section 302 IPC. On 26.04.2003 at about 8.00pm en route to Tirunelveli, the accused started vomiting, which made the appellant to admit him in a hospital at Maduranthagam, where he was reported dead on account of consumption of poison on 27.04.2003 at 02:15hours.

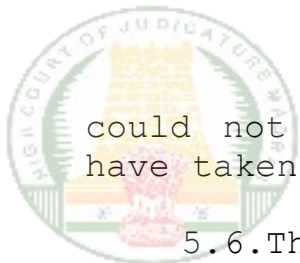
5.2. In respect of this incident, after five long years, a belated charge memo was issued with two counts of charge. The first charge is that the appellant did not follow the procedure while effecting the arrest of Ramar and the 2nd charge is that the death of Ramar was not intimated to authorities promptly but belatedly.

5.3. The 1st charge was held proved, for which the 3rd respondent imposed punishment of reduction of two stages in time scale of pay for two years without cumulative effect through the non speaking order dated 11.02.2009.

5.4. Perusal of the order would reveal the following facts:

i) the appellant along with two Head Constables is stated to have gone to the residence of P.W.2 / sister of the accused and collected the information regarding the whereabouts of the accused; while the police party was at the residence of P.W.2, she conveyed the message that Tirunelveli City Police have come to arrest him in connection with a murder case and this happened while she received the call from the accused.

5.5. With regard to the time of death, Doctor, who conducted the postmortem has given an opinion that the deceased would have consumed poison nearly 4 to 5 hours prior to the death of the deceased. The inference drawn by the disciplinary authority is that the accused would have consumed poison as soon as he heard the arrival of the police party through P.W.2 / his sister. This inference drawn would go to show that the appellant



could not have been an instrumental factor for the deceased to have taken the decision to commit suicide.

5.6. The further finding is that there was two hours time gap between the information passed to the accused and the actual arrest and therefore, anticipating many things and to rule out the possibility of the deceased having consumed any unwanted drinks, the appellant should have subjected the accused to thorough examination, including medical examination.

6. Whether these conclusions are supported by evidence or 'no evidence' is the issue to be considered.

7. It is not the case of the Disciplinary Authority that the deceased took poison after he was brought to police custody and only in that case, the question of search would come into picture. It is not the case of the respondents that the accused died on account of lack of medical examination. As and when the medical assistance was needed, the appellant has given the accused the required medical care. There is nothing for the appellant to suspect that the accused would have consumed poison so that it is expected of him to take him to a hospital immediately after arrest, more especially when there was no symptoms indicating that the accused would have consumed poison. It is not a normal conduct of an accused to take poison immediately on hearing that Police would arrest him. ***It is the abnormal conduct of the accused, which the appellant is not expected to anticipate.***

8. So long as the 2nd charge is concerned, the finding itself is that it is not proved.

9. The specific allegation is that while effecting arrest, provisions of Section 51 Cr.P.C., was not followed. Section 51 Cr.P.C. speaks about the search of arrested person. Section 51 Cr.P.C. is extracted below for convenient reference:

"51. Search of arrested person.

(1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the Person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail, the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, ***may search such person***, and place in safe custody all articles, other than necessary wearing- apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such



person.

(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

10. Section 55-A Cr.P.C. speaking about the examination of arrested person by the Police Officer also is an important provision to be considered.

"55-A. Health and safety of arrested person - It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused. [* Inserted vide Code of Criminal Procedure Amendment Act, 2008] Whenever it is necessary to cause a female to be searched

10.1. Whether there is evidence to hold that the petitioner is guilty of violation of Section 51 or 55A of Cr.P.C., is the issue to be considered.

11. In the appeal, the evidence of the wife of the deceased is relied upon and she is alleged to have stated that a) the deceased consumed poison being **afraid of the loss of reputation** in case he becomes an accused in the murder case; b) before leaving to Chennai, the deceased made an **appeal to his wife to look after the child** and that he expressed his grievance that there are **attempts to make him as accused in an accident/murder case**.

12. The fact that arrest was made after following the procedure and that there was a search following the arrest have been spoken to by P.Ws. 2 & 3.

13. It is settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion. It is relevant to find the views of the appellate authority.

14. The 2nd respondent / DGP has sent the recommendation for reduction of punishment to Government, in which the observation reads as under:

"3... I have gone through the petition dated 04.11.2009 PR file and connected records thoroughly and carefully and come to the following conclusion.

There is no element of torture or ill-treatment of the deceased by the A.O. (petitioner) in this case. **There is also no evidence to show that the deceased consumed poison while in the custody of the A.O.** It appears that driven by the sense of shame, the deceased would have consumed poison, as



he was waiting for the arrival of the police.

It has to be noted in favour of the A.O. that he came all the way to Chennai from Tirunelveli and managed to trace down the deceased, who was in an accused in a murder case. It is unfortunate that the deceased chose to end his life while in the custody of the Police, but the A.O. cannot be held responsible for the death. Subjecting him to medical examination immediately after securing him might have helped.

Considering all these circumstances, I am of the view that a Censure would meet the ends of justice.

14.1. This observation by the Appellate authority is perfectly, completely and totally supported by the oral and circumstantial evidence.

15. Even thereafter, by the order dated 19.01.2012, the Government has rejected the recommendation of the DGP. Aggrieved over that the petitioner has raised his contentions in the writ appeal.

16. The dismissal of the writ petition was on the ground that while exercising jurisdiction under Article 226 of the Constitution of India, the court is concerned only with the decision making process and it is not open to the Court to analyze the material considered by the Disciplinary Authority and take a different view.

17. It is true that the Court is mainly concerned with the decision making process, but in the course of consideration, if it is found that the decision itself had been taken, based on no evidence, then the decision is a perverse decision, and in that case, this Court is bound to interfere.

18. At this juncture, it is necessary to consider the decisions with regard to the perverse finding.

19. The meaning of perverse and yardstick to be adopted in evaluating the evidence has been illustrated with clarity in the judgment which has a persuasive value **In *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319, Justice Gleason provided the following guidance on interpreting S.18.1(4):**

"In the seminal case interpreting section 18(1)(d) of the FCA, *Rohm & Haas*, Chief Justice Jacket defined "perversity" as "willfully going contrary to the evidence" (at para 6). Thus defined, there will be relatively few decisions that may be characterized as



perverse.

The notion of "capriciousness" is somewhat less exacting. In *Khakh v Canada* (Minister of Citizenship and Immigration), (1996), 116 FTR 310, [1996] FCJ No 980 at para 6, Justice Campbell defined capricious, with reference to a dictionary definition, as meaning "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment, intent or purpose". To somewhat similar effect, Justice Harrington in *Matondo v Canada* (Minister of Citizenship and Immigration), 2005 FC 416 at para 1, [2005] FCJ No 509, defined "capricious" as being "so irregular as to appear to be ungoverned by law". Many decisions hold that ***inferences based on conjecture are capricious***. In *Canada* (Minister of Employment and Immigration) v *Satiacum* (1989), 99 NR 171, [1989] FCJ No 505 (FCA) at para 33, Justice MacGuigan, writing for the Court, stated as follows regarding conjecture:

The common law has long recognized the difference between reasonable inference and pure conjecture. Lord Macmillan put the distinction this way in *Jones v. Great Western Railway Co.* [citation omitted]:

The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible but it is of no legal value, for its essence is that it is a mere guess. An inference in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof. ...

Turning, finally, to the third aspect of section 18.1(4)(d), the case law recognizes that a finding for which there is no evidence before the tribunal will be set aside on review because such a finding is made without regard to the material before the tribunal (see e.g. *Canadian Union of Postal Workers v Healy*, 2003 FCA 380 at para 25, [2003] FCJ No 1517). Beyond that, it is difficult to discern a bright-line. The oft-cited *Cepeda-Gutierrez v Canada* (Minister of Citizenship and Immigration) (1998), 157 FTR 35, [1998] FCJ No 1425) [Cepeda-Gutierrez] provides a useful review of the sorts of errors that might meet the standard of a decision made ***"without regard to the material" before the tribunal*** which fall short of findings for which there is no evidence. There, Justice Evans (as he then was) wrote at

... in order to attract judicial intervention under



section 18.1(4) (d), the applicant must satisfy the Court, not only that the Board made a palpably erroneous finding of material fact, but also that the finding was made "without regard to the evidence" ...

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The Court may infer that the administrative agency under review made the erroneous finding of fact "without regard to the evidence" from the agency's failure to mention in its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency. Just as a court will only defer to an agency's interpretation of its constituent statute if it provides reasons for its conclusion, so a court will be reluctant to defer to an agency's factual determinations in the absence of express findings, and an analysis of the evidence that shows how the agency reached its result.

On the other hand, the reasons given by administrative agencies are not to be read hypercritically by a court [citations omitted]... nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it ... That would be far too onerous a burden to impose upon administrative decision-makers who may be struggling with a heavy case-load and inadequate resources. A statement by the agency in its reasons for decision that, in making its findings, it considered all the evidence before it, will often suffice to assure the parties, and a reviewing court, that the agency directed itself to the totality of the evidence when making its findings of fact.

However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": ... In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact."



reported in MANU/DE/0257/2016, where under, the relevant observation touching the limits of judicial review has been highlighted.

- 1.21. The limits of judicial review of penalty/punishment imposed by the Disciplinary/Appellate Authority are reiterated by the Apex Court in **Rajasthan Tourism Development Corporation Limited and Another v. Jai Raj Singh Chauhan (2011) 13 SCC 541** as under: -

"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappraise the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may **not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable**. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either **impermissible** or such that **it shocks the conscience of the High Court**, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for **procedural illegalities or irregularities which vitiate the process** by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in Chief Constable



of the North Wales Police v. Evans [(1982) 1 WLR 1155 : (1982) 3 All ER 141 (HL)] observed: (WLR p. 1160) '**... The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.**'

17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

21.1. So far as this case is concerned, this Court exercising the powers of judicial review, ***finds that the recorded findings by the disciplinary authority, were based on no evidence and that the findings were wholly perverse and legally untenable.*** How it is perverse is explained in various places in the judgment. Therefore, those findings are liable to be set aside.

The next contention is with regard to Delay in filing charge memo:

22. It is important to consider the decisions relating to the consequences of delay in filing the charge memo, as in this case, there is a delay of five years in filing the charge memo.

22.1. This Court was originally considering the fact that the issue regarding delay in framing the charge memo has not been raised at the earliest point of time. But, in the Writ Appeal in ground (f) the belated issuance of charge memo has been specifically raised as an issue. Even assuming that this issue is not raised, while considering the bonafides / malafides of the charge memo, the issue regarding belated issuance of charge memo is a critical issue. It is appropriate to consider the consequences / prejudices caused on account of the delay as well as the necessity of considering the issue regarding delay (even if it is not raised has been highlighted in the decision of the High Court of Delhi, in W.P.(C) No.4757/2007, Pronounced on: 3rd July, 2009 (Union of India v. Shri V.K. Sareen), relied upon the judgment of the Supreme Court, in the case of **P.D. Agrawal Vs. State Bank of India and Others, (2006) 8 Supreme Court Cases 776**, wherein the relevant findings reads as under:-

<https://hcservices.ecourts.gov.in/hcservices/>

"..... In that case the Hon'ble Supreme Court noted that the appellant had not raised any question on the



ground of delay or otherwise before any forum. It was further noted that this was not the case of the appellant before the Appellate Authority or before the High Court that due to delay, it had been prejudiced in any manner. The Hon'ble Court however held that the delay itself could be a ground to arrive at a finding that enquiry proceeding was vitiated, if it is shown that on account of delay, the delinquent officer had been prejudiced.....

It is trite law that disciplinary proceedings should be conducted soon after the alleged mis-conduct or negligence on the part of the employee is discovered. Inordinate delay cannot be said to be fair to the Delinquent Officer and since it would also make the task of proving the charges difficult, it would also not be in interest of administration. If the delay is too long and remains unexplained, the court may interfere and quash the charges. However, how much delay is too long would depend upon the facts of each and every case and if such delay has prejudiced or is likely to prejudice the delinquent in defending the enquiry ought to be interdicted.

22.2. In *Shri Anant R. Kulkarni v. Y.P. Education Society and Others* MANU/SC/0427/2013: (2013) 6 SCC 515, the Hon'ble Apex Court held:

"14. 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, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein.** The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. **The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the said proceedings are allowed to**



be terminated, only on the ground of a delay in their conclusion. "

22.3. In a case decided by this Court on 20.04.2016 between K. Govindaraj -vs- The Commissioner Tribunal for Disciplinary Proceedings and Ors., the following dictum has been laid down:

"Learned counsel appearing for the petitioners contended that the disciplinary proceedings had been initiated against the petitioner after inordinate and unexplained delay of 13 years on the alleged acts which pertained to the year 2000 thereby exposing the petitioners to **grave prejudice, mental agony and suffering which is more than a punishment**. Even though the records were very much available with the respondents, no action was taken against the petitioners since 2000, **no explanation whatsoever was offered by the respondents for the inordinate delay in initiating the disciplinary proceedings**, depriving them of opportunity of effectively defending themselves in view of loss of memory and other aspects. He added that the **charges framed against them are false and baseless, besides being motivated to put the same as an obstacle for their promotion**. Hence allowing the respondents to proceed further with the impugned disciplinary proceedings at this distance of time will be prejudicial to the petitioners."

22.4. Apart from the decisions cited by the Court, contending that the delay in filing the charge memo causes prejudice, hence, it is liable to be quashed, learned counsel relied on the following decisions:--

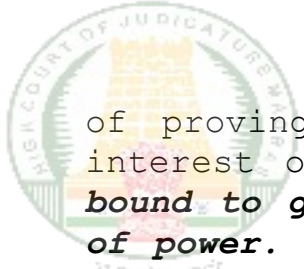
"(a) Ranjeet Singh v. State of Haryana and others [2008 (3) CTC 781] (SC)

(b) P.V. Mahadevan v. Managing Director, Tamil Nadu Housing Board [MANU/SC/0483/2005: 2005 (4) CTC 403] (SC)

(c) Tamil Nadu Housing Board v. R. Chakrapani [MANU/TN/1856/2012: 2012 (6) CTC 69]

(d) G. Maragatha Meenakshi v. The District Collector [2010 (2) CWC 154]"

23. The delay of 13 years in serving the memo of charges, for which there is no acceptable explanation, is itself a ground for quashing the charge. It is trite to say that disciplinary proceeding must be conducted **soon after the irregularities are committed or soon after discovering the irregularities**. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task



of proving the charges difficult and is thus not also in the interest of administration. **Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power.** If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. 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.

24. More over, while considering whether the 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 the 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 their 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 blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

25. The Hon'ble Supreme Court has, time and again, held that keeping a higher Government official under charge of corruption would cause unbearable mental agony and distress to the officer concerned and 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**. It is, therefore, at this stage, necessary to draw the curtain and to put an end to the enquiry.

26. So far as the first question as to the delay in initiating the Disciplinary proceedings is concerned, there is a series of judgments of the Apex Court on this issue. In *State of Andhra Pradesh v. N. Radhakrishnan*, MANU/SC/0278/1998: 1998 (4) SCC 154, the Apex Court, while considering the unexplained delay of 10 years having caused prejudice to the delinquent, held as follows:

79. 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 blame for the delay or when there is proper explanation for the delay in conducting the Disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

27. In P.V.Mahadevan v. Managing Director, Tamil Nadu Housing Board, MANU/SC/0483/2005: 2005 (4) CTC 403 (SC) : 2005 (6) SCC 636, the Apex Court 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."

28. The next ground urged is that belated charge memo after five years would cause serious prejudice to the appellant and it is only vindictive attitude exhibited on the part of the respondents. This contention is also acceptable. It is not a case where the incident occurred was latent / hidden / invisible, which was brought to light after some enquiry or probe. The nature of allegation is also not serious .

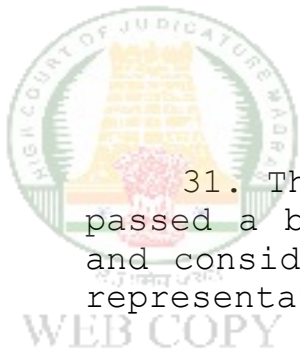
28.1. There is no allegation of torture or ill-treatment of the deceased by the appellant in this case. **There is also no evidence to show that the deceased consumed poison while in the custody of the appellant .** It appears that driven by the sense of shame, fearing loss of reputation the deceased would have consumed poison, while he was waiting for the arrival of the police and not after the arrest of the accused. The arrest and search having been made according to procedure prescribed by law and safety to be taken care of as that of a reasonable man is borne out by evidence and records. **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.**

29. It is trite to say that disciplinary proceeding must be conducted **soon after the irregularities are committed or soon after discovering the irregularities.** It is not the case of the respondents that the **irregularities were discovered later .**

30. There is no explanation whatsoever by the respondents for the inordinate delay in initiating the disciplinary proceedings.

30.1. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power.

30.2. Therefore, there is no justification to have initiated the proceedings after five years and on this sole ground the proceedings are to be quashed.



31. The next contention is that the disciplinary authority has passed a bald and non-speaking order, without taking into account and considering any of the issues raised by the Appellant in his representations hence it is liable to be quashed.

32. *It is settled law that the **appellate authority is required to see as to whether (i) the procedure laid down in the rules was complied with; (ii) the Enquiry Officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.***

33. Nature and scope of power of appellate authority has been highlighted in the decisions referred hereunder:

“IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1005/2012

Decided On: 14.07.2015

Appellants: **Rekha and Ors.**

Vs.

Respondent: **Union of India and Ors.**

..... it is seen from the single page report of the Enquiry Officer that he has not followed the prescribed procedure. He has conducted the enquiry in a slipshod manner. His attitude was quite biased, unconcerned and casual. Such an enquiry has been deprecated by the Apex Court in State of U.P. Vs. Saroj Kumar Sinha MANU/SC/0082/2010: 2010 (2) SCC 772 wherein it has been held as under:-

"28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of Shaughnessy v. United States, MANU/USSC/0063/1953: 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe laws can be endured if they are fairly and impartially applied."



18. It is unfortunate that the quasi judicial authorities like the Disciplinary Authority, Appellate Authority and the Revisional Authority have also not bothered to see whether the Enquiry Officer has concluded the ex-parte enquiry in accordance with the prescribed procedure and in consonance with the principles of natural justice. The Disciplinary Authority did not consider any of the issues raised by the Applicant in his representation. It is now too well established that the disciplinary authority in a quasi-judicial proceeding has to pass a detailed and speaking order, taking into account all the points raised by the charged officer, because such orders have civil consequences. In the instant case, the disciplinary authority has passed a bald and non-speaking order, without taking into account and considering any of the issues raised by the Applicant in his representation. The Apex Court in its judgment in the case of Roop Singh Negi V. Punjab National Bank and others, MANU/SC/8456/2008: (2009) 2 SCC 570 held as under:-

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

19. The Appellate Authority has also passed its order just as a formality without considering the material facts and without ensuring that the enquiry was held in a fair and judicious manner. As held by the Apex Court in the case of Apparel Export Promotion Council Vs. A.K. Chopra MANU/SC/0014/1999:1999 (1) SCC 759 the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities and the appellate authority could not ignore to exercise the said power. The Apex Court held further in the case of Narinder Mohan Arya Vs. United India Insurance Co. Ltd. & Others



MANU/SC/1901/2006: 2006 (4) SCC 713, as under:-

"33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

36. The order of the appellate authority demonstrates total non-application of mind. The appellate authority, when the rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression '*consider*' is of some significance. In the context of the rules, the appellate authority was required to see as to whether (i) the procedure laid down in the rules was complied with; (ii) the Enquiry Officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.

37. In *R.P. Bhatt V. Union of India* [MANU/SC/0193/1982: (1986) 2 SCC 651] this Court opined:

"The word "*consider*" in Rule 27(2) implies "due application of mind". It is clear upon the terms of Rule 27 (2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule



27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

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34. The learned counsel for the appellant relied upon the decision reported in 2011 (7) MLJ 1282, where-under, it has been held that an order passed without dealing with the grounds raised by the delinquent before the appellant authority is a non speaking order and it is liable to be set aside.

35. So far as this case is concerned, the appellate authority (R2) has come to a reasonable conclusion that the appellant could not have been responsible for the unfortunate death of the deceased and therefore, censure itself is sufficient. But this recommendation was not accepted by the 1st respondent. The 1st respondent did not give any acceptable reasons as to why the recommendation was not accepted. The order merely states that the Government have accepted the punishment imposed on the petitioner and on the other delinquent earlier and therefore, the recommendation of the 2nd respondent cannot be accepted. But there are no records to show that the punishment was accepted earlier.

36. In fact there is no obligation on the part of the appellate authority to take the opinion of the Government on the proposed punishment. Therefore, the opinion offered by the Government is not at all relevant and the Writ Appeal is liable to be set aside.

37. Under normal circumstances, if the punishment is set aside on the ground that it is disproportionate, this Court would have remitted the matter back to the Punishing Authority / Appellate Authority to decide the issue afresh. But, in this case, it is found that the finding is perverse and also that the charge memo is liable to be quashed on the ground of unexplained inordinate delay and therefore, there is no necessity to remand the matter.

38. In the result, the Writ Appeal is allowed and the order dated 18.08.2016 passed in W.P.(MD)No.14209 of 2014 stands set aside. The charge memo issued as against the petitioner herein stands quashed, on the point of limitation. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar



To:

1. The Principal Secretary to Govt.,
Home (Police-IV A) Department,
Secretariat, Chennai-600 009.
2. Director General of Police,
DGP Office, Appellate Authority,
Chennai-600 004.
3. Deputy Inspector General of Police,
CID-Intelligence, Punishing Authority,
Chennai.
4. Commissioner of Police,
Tirunelveli City Police,
Tirunelveli.
5. Assistant Commissioner of Police (L&O),
Enquiry Officer,
Tirunelveli City Police,
Tirunelveli.

+1cc to Mr.G.Thalaimutharasu Advocate Sr.No. 78249

JAM/21.12.16/SS 3 /SAR 1/20p-7c

JUDGMENT IN
W.A. (MD) No.1347 of 2016
01.12.2016