

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 09.01.2017

Delivered on :: 12.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. Nos.48, 49, 175 and 176 OF 2017

W.P.Nos.48, 49 of 2017:-

- 1 M.S.JaffarSait
Formerly Additional Director General of
Police Intelligence Chennai Special
Officer (Under suspension)
Refugee Camp 363 Sethu Nagar
Mandapam Ramnad District ... petitioner

Vs
- 1 The Union of India
Rep by the Secretary to The Ministry of Home
Affairs North Block New Delhi-110 001
- 2 State of Tamil Nadu
Rep by Principal Secretary to Government
Home (SC) Department Fort St. George
Chennai-600009
- 3 The Directorate of Vigilance
and Anti-Corruption Rep by the Deputy
Superintendent of Police Vigilance and Anti-
Corruption Chennai City-I Detachment
Chennai-600028

Writ Petition in W.P.No.48 of 2017 filed under Article 226 of the Constitution of India seeking for a Writ of Certiorarified Mandamus Calling for the records of the impugned order of the Central Administrative Tribunal Chennai dated 10.08.2016 passed in M.A. No.551 of 2016 in O.A. No.1144 of 2015 quash the same to the extent the same failed to set aside the order of the 2nd respondent dated 12.07.2016 in G.O.Ms. No.524 and consequentially direct the 2nd respondent to forthwith issue posting orders for the petitioner

Writ Petition in W.P.No.49 of 2017 filed under Article 226 of the Constitution of India seeking for a Writ of

Certiorarified Mandamus Calling for the records of the impugned order of the Central Administrative Tribunal Chennai dated 10.08.2016 passed in M.A. No.550 of 2016 in O.A. No.1886 of 2014 quash the same to the extent the same failed to set aside the order of the 2nd respondent dated 12.07.2016 in G.O.Ms. No.524 and consequentially direct the 2nd respondent to forthwith issue posting orders for the petitioner.

W.P.Nos.175 and 176 of 2017:-

- 1 State of Tamil Nadu
Rep. by Secretary to Government Home
Department Fort St. George Chennai-9.
 - 2 The Directorate of Vigilance
and Anti Corruption Rep. by Deputy
Superintendent of Police Vigilance and Anti
Corruption Chennai City-I Detachment
Chennai-28. petitioners
- versus
- 1 M.S.Jaffar Sait I.P.S.
Formerly Addl. Director Genl. of Police
Intelligence Chennai Spl. Officer (Under
suspension) Refugee Camp 363 Sethu Nagar
Mandapam Ramnad Dt
 - 2 The Union of India
Rep. by Secretary to The Ministry of Home
Affairs North Block New Delhi-1 ...Respondents 1 & 2 in
WP.NOs. 175 & 176/17
 - 3 The Union of India
Rep. by Secretary to The Ministry of
personnel and Training North Block New
Delhi-1. ...3rd Respondent in WP.175/17
 - 4 The Registrar
Central Administrative Tribunal Madras
Bench Chennai. ...4th Respondent in WP.175/17 and
3rd Respondent in WP.176/17

Writ Petition in W.P.No.175 of 2017 filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari calling for the records of the Honourable Central Administrative Tribunal Madras Bench the fourth respondent herein pertaining to the impugned order dated 10.8.2016 in M.A. No.550 of 2016 in O.A. No.1886 of 2014 and the Common Order dated 19.4.2016 made in O.A. No.1886 of 2014 and quash the same.

Writ Petition in W.P.No.176 of 2017 filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari calling for the records of the Honourable Central Administrative Tribunal Madras Bench the third respondent herein pertaining to the impugned order dated 10.8.2016 in M.A. No.551 of 2016 in O.A. No.1144 of 2015 and the Common Order dated 19.4.2016 made in O.A. No.1144 of 2015 and quash the same.

Appearance:-

Mr.R.Muthukumaraswamy, Advocate General,
Assisted by Mr.K.V.Dhanapalan, Spl.G.P., for petitioner in
W.P.Nos.175 and 176 of 2017

Mr.K.Venkataramani, Additional Advocate General VII, Assisted by
Mr.K.V.Dhanapalan, Spl.G.P. For respondents 2 and 3 in
W.P.Nos.48 and 49 of 2017

Mr.Vijay Narayan, Senior counsel, for M/s.Ahmad Associates,
for 1st respondent in W.P.Nos.175, 176 of 2017 and Petitioner in
W.P.Nos.48 and 49 of 2017.

Mr.Su.Srinivasan, Additional Solicitor General, for respondents
2 and 3 in W.P.Nos.175, 176 of 2017 and 1st respondent in
W.P.Nos.48, 49 of 2017.

COMMON ORDER

Introductory :-

This is the case of a senior Police Officer of Indian Police Service in the rank of Additional Director General of Police, in charge of Intelligence under the previous Government, who was placed under suspension, immediately on assumption of office by the new government in 2011 and the victim of prolonged suspension for the last 5 years and 5 months, pending disposal of criminal cases (initiated on allegation of helping his subordinates to acquire housing plots under discretionary quota by creating records and thereby causing loss to the Tamil Nadu Housing Board, besides taking allotment under the discretionary quota in the name of his wife and entering into a joint venture with a builder) without there being an allegation of tampering with evidence or influencing the process of enquiry or investigation and in spite of the remote chance of commencing the criminal proceedings in the near future, on account of the orders passed by the Central Government, declining sanction for prosecution and the pendency of related writ petitions filed by the State Government challenging the correctness of those orders, besides the writ proceedings challenging the issuance of summons by the criminal court taking cognizance without obtaining mandatory sanction for prosecution and the stay granted by the High Court restraining the Trial Court from proceeding further.

Backdrop :-

2. The State of Tamil Nadu without challenging the order passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal"), directing revocation of suspension and reinstatement of Thiru.Jaffer Sait, I.P.S., Additional Director General of Police, filed clarification petitions with an innocuous prayer before the Tribunal to clarify the final order dated 19 April 2016 and pending disposal of the petitions, to stay the revocation of suspension and reinstatement and after obtaining stay of operation of the final order, extended the period of suspension and after the dismissal of the clarification petitions, took a "U turn" and filed Writ Petitions in W.P.No.175 and 176 of 2017, challenging the order directing reinstatement after revoking suspension.

3. The suspended police officer filed Writ Petitions in W.P.Nos.48 and 49 of 2017 challenging the order in the clarification petitions on account of the failure on the part of the Tribunal to set aside the order extending suspension made by taking advantage of the interim stay of operation of the final order, directing his reinstatement.

4. Since there are four Writ Petitions, two by the State and another two by the delinquent, for the sake of convenience, the employee is hereinafter referred to as "the petitioner" and the petitioner in W.P.Nos.175 and 176 of 2016 is referred to as State.

Summary of facts:-

5. The petitioner is a 1986 batch Police Officer of Indian Police Service, allotted to the State of Tamil Nadu. The petitioner held the position of Inspector General of Police (Intelligence) and Additional Director General of Police (Intelligence) between the period 2007-2011.

6. The then opposition political party, immediately after coming into power in the State in 2011, initiated departmental proceedings and criminal action against the petitioner on allegation that he misused his official position and acquired house plots under the Government discretionary quota, in the name of his wife and daughter, misused his official position and thereby acquired pecuniary benefits, besides helped two of his subordinates to obtain housing plots out of Government quota by fabrication of records.

7. The Vigilance and Anti-Corruption Department, registered a case against the petitioner on 23 July 2011. Thereafter, the petitioner was suspended from service with effect from 1 August 2011, with headquarters at Mandapam, near Rameshwaram, which is about 650 kms., away from his family house at Chennai.

8. The Directorate of Vigilance and Anti Corruption laid a charge sheet in the Court of Special Judge, Chennai, against the petitioner, his wife and others.

9. Since sanction from the Competent Authority under Section 19 of the Prevention of Corruption Act was not taken before laying charge sheet, the petitioner and his wife filed Writ Petitions in W.P.Nos.28798 of 2013 and 28799 of 2013 challenging the summons issued by the Special Court in C.C.No.25 of 2013. The High Court directed the Competent Authority to take a decision in the matter of sanction for prosecution and granted interim stay of further proceedings in C.C.No.25 of 2013.

10. The Competent Authority rejected the request for sanction for prosecution by order dated 29 November 2013 and 19 May 2014. The interim stay granted earlier was therefore extended by the High Court until further orders. Thereafter, the Principal Secretary to Government (Home), issued a charge memo to the petitioner dated 6 August 2014.

11. The petitioner made a request to furnish him copies of documents referred to in the charge memo. Since the plea was rejected, the petitioner filed O.A.No.1886 of 2014 before the Tribunal.

12. The suspension of the petitioner was extended periodically. The petitioner filed O.A.No.1144 of 2015 to set aside the order of suspension dated 1 August 2011.

13. The petitioner, pursuant to the liberty given by the Tribunal in O.A.No.1144 of 2015, submitted an application to the Government for change of headquarters. The order dated 21 November 2015 rejecting the application for change of Headquarters was challenged by the petitioner before the Tribunal in O.A.No.1715 of 2015.

14. Before the Tribunal, the State justified the prolonged suspension primarily on the ground that it was only on account of the series of litigations initiated by the petitioner and the interim orders granted by the Court, the disciplinary proceedings and criminal cases were delayed. According to the State, orders declining sanction were challenged before the High Court and the criminal cases would commence after the disposal of the Writ Petitions.

15. The Tribunal passed a common order in O.A.Nos.1886 of 2014, 1144 of 2015 and 1715 of 2015 on 19 April 2016. The Tribunal directed the State to furnish copies of documents to the petitioner within ten days. The Tribunal while allowing O.A.No.1144 of 2015, directed the State to re-instate the petitioner into service. In view of the order revoking suspension and reinstatement, O.A.No.1715 of 2015 challenging rejection of the order changing the Headquarters was dismissed as infructuous.

16. The State without challenging the order dated 19 April 2016, filed two petitions on 1 July 2016, seeking clarification of the final order in O.A.Nos.1886 of 2014 and 1144 of 2015. The State along with the clarification petitions, filed an interlocutory application to stay the final order dated 19 April 2016, directing reinstatement after revoking suspension.

17. The Tribunal passed an interim order of stay of its own order. The State, on receipt of the interim order of stay dated 6 July 2016, extended the period of suspension for 180 days beyond 15 July 2016.

18. The petitioner filed miscellaneous petitions before the Tribunal to decide the maintainability of clarification petitions.

19. The Tribunal by order dated 10 August 2016, dismissed the clarification petitions and related stay petitions. However, the Tribunal failed to set aside the suspension order dated 12 July 2016, which was passed by making use of the interim order of stay granted, pending disposal of the clarification petitions. Feeling aggrieved, the petitioner filed W.P.Nos.48 and 49 of 2017.

20. The State, after a period of 8 months and 12 days, filed W.P.No.175 of 2017 and 176 of 2017, challenging the final order passed by the Tribunal dated 19 April 2016.

21. Submissions made by the learned Senior Counsel for the petitioner :-

(a) The Tribunal committed a material irregularity and illegality by not setting aside the order passed by the Disciplinary Authority extending suspension, on the strength of the interim order in M.A.Nos.550 and 551 of 2016 in O.A.Nos.1886 of 2014 and 1144 of 2015.

(b) The Tribunal revoked the suspension and directed reinstatement. The order was passed on 19 April 2016. The Tribunal was not correct in staying the operation of the final order thereafter and facilitating the Government to pass a fresh order, extending suspension;

(c) Since the suspension was extended on the strength of the interim order, the Tribunal was expected to undo the harm by making an observation that the suspension order would come to an end on account of the dismissal of the clarification petitions.

(d) The petitioner was not accused of illegal gain or quid pro quo. The criminal cases were registered on allegation that he helped his subordinates to obtain allotment on discretionary quota and that he himself got one such allotment and made arrangements for joint venture. In view of the peculiar facts, there was no need for suspension of the petitioner.

(e) The Central Government refused to grant sanction for prosecution. The State Government challenged the orders passed by the Central Government. The Writ Petitions are pending before this Court. Similarly, Writ Petitions filed by the petitioner and his wife challenging the summons are also pending before this Court. The question of taking up the criminal cases for trial would arise only after the disposal of the Writ Petitions. This vital aspect was not considered by the Reviewing Authority or Disciplinary Authority while extending the suspension indefinitely.

(f) The review committee failed to consider the vital factors indicated under Rule 3 (3) while recommending extension of suspension.

(g) The Tribunal considered the issue in extenso and passed a detailed order revoking suspension and directing reinstatement. The order is not liable to be interfered by this Court by exercising power of judicial review.

(h) The Rules very clearly provide for supply of copies of documents along with charge memorandum. The petitioner would be in a position to persuade the Disciplinary Authority to drop the proceedings, in case he is given documents to give a meaningful reply.

Submissions made on behalf of the State:-

22. The learned Advocate General made the following submissions:-

(a) The petitioner is involved in three criminal cases, registered by the Directorate of Vigilance and Anti Corruption. Rule 3(3) permits the Disciplinary Authority to place the officer under suspension until termination of the criminal proceedings. The Government was therefore correct in passing initial order of suspension on 1 August 2011 and series of orders thereafter, extending the period of suspension;

(b) The case of the petitioner was considered periodically by the Reviewing Authority and a decision was taken to extend the period of suspension on valid grounds. This aspect was not considered by the Tribunal;

(c) There is no statutory rule to the effect that copies of the documents should be given to the delinquent along with the charge memo. The rule provides for furnishing copies after the appointment of the Enquiry Officer. The Tribunal was therefore not correct in directing the Government to furnish documents to the petitioner even before appointment of Enquiry Officer.

(d) The State filed miscellaneous petitions for clarification along with stay petition to stay the order in the original applications. The Tribunal was appraised of the entire matter and on merits, stay was granted. The subsequent order extending suspension, therefore, is perfectly legal and does not call for interference;

(e) The delinquent has no right to seek revocation of suspension in view of his involvement in criminal cases registered by the Directorate of Vigilance and Anti Corruption.

Submissions made on behalf of the Central Government :-

23. The Assistant Solicitor General of India submitted that the Ministry of Home Affairs, Government of India, scanned the entire materials and arrived at a clear finding that there is no case made out to prosecute the petitioner. According to the learned Assistant Solicitor General, the file relating to the petitioner was produced before the Central Government and it did not disclose criminality and as such, the request made by the State Government for grant of sanction for prosecution of the petitioner was rightly rejected. The learned Assistant Solicitor General further submitted that Government of India has given cogent reasons while rejecting the request made by the State Government for sanction to prosecute the petitioner.

Discussion :-

24. The petitioner was suspended from service with effect from 1 August 2011, with headquarters at Mandapam in the District of Ramanathapuram, by order dated 1 August 2011. The suspension was on account of a criminal case under investigation. It was not a suspension pending initiation of disciplinary proceedings.

25. The suspension order was periodically extended, taking into account the advice given by the Review Authority. The Tribunal while directing reinstatement, observed that the extensions were made mechanically in a standard format.

26. The petitioner is governed by the All India Services (Discipline and Appeal) Rules, 1969. Rule 3(3) empowers the Government concerned to place the member of All India Service under suspension at its discretion until the termination of all proceedings relating to that charge.

27. The core question is whether the Government have exercised its discretion objectively while extending the period of suspension.

28. Even though the Government was well aware that sanction for prosecution has to be obtained under Section 19 of the Prevention of Corruption Act from the Competent Authority, no such sanction was taken. The Director of Vigilance and Anti Corruption, on the basis of the opinion obtained from the Advocate General laid the charge sheet, without taking efforts to obtain sanction. The petitioner and his wife therefore filed Writ Petitions, to quash the summons issued by the Special Court. The High Court after staying the further proceedings, directed the Central Government to consider the question of sanction for prosecution.

29. The Competent Authority passed orders dated 29 November 2013 and 19 May 2014 declining to grant sanction and produced the orders before the writ court. The stay of further proceedings of criminal case is still in force and the Writ Petitions are pending for disposal.

30. The State challenged the orders passed by the Central Government declining sanction in W.P.Nos.2065 of 2015 and 2066 of 2015. The Writ Petitions are pending for disposal before this Court without any order of stay.

31. The dates and events indicated above clearly shows that the petitioner was not at fault for the delay in proceeding with the criminal prosecution or disciplinary proceedings. The State was expected to obtain sanction from the Competent Authority before filing charge sheet. The non compliance of a mandatory provision made the petitioner to challenge the summons issued in C.C.No.25 of 2013. The Competent Authority ultimately declined to grant sanction. This made the State to approach the High Court by filing Writ Petitions against the Central Government.

Prolonged suspension :-

32. The petitioner was suspended from service by order dated 1 August 2011, pending investigation.

33. Rule 3(3) empowers the State to place the officer under suspension till the termination of criminal proceedings. The Government has to exercise the discretion taking into account the magnitude of the charges, possibility of committing similar offences, possible attempt to tamper with the evidence or influencing the witnesses. The Government must take note of the status of the criminal case and whether the trial would commence in the near future. The incidental proceedings connected to the criminal cases also should be looked into, to assess the time required for conclusion of the criminal proceedings. The discretion is given to the Disciplinary Authority to analyze the materials and arrive at a decision as to whether suspension should be continued till the disposal of the criminal case.

34. The Supreme Court in Ajay Kumar Choudhary vs. Union of India and another, 2015(7) SCC 291, deprecated the practice of protracted suspension and repeated renewal and indicated that a reasoned order must be passed for the extension of suspension.

The Supreme Court said :-

"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning

contemporaneously available on the record, this would render it punitive in nature. Departmental/ disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial."

35. The petitioner has been placed under suspension for five years and 5 months now. He is practically confined at Mandapam, in the District of Ramnad. According to the petitioner, he is not in a position to move, on account of the condition that he should reside at Mandapam, during the period of suspension. His family is stated to be at Chennai. The Government has even dismissed his petition for change of headquarters.

36. The observation made by the Hon'ble Supreme Court in para 11 of the judgment in Ajay Kumar Choudhary, would apply to

the case of the petitioner. We have therefore no hesitation in concluding that the petitioner was subjected to protracted suspension without any valid reason and the order extending the suspension was passed without taking into account the relevant materials.

Review of Suspension

37. The Review Committee constituted by the Government recommended for the continuation of suspension originally on the ground of pendency of investigation and subsequently on various grounds like pendency of the matter with the Central Government for sanction of prosecution, initiation of writ petitions by the State challenging denial of sanction to prosecute the petitioner and pendency of various original applications before the Tribunal.

38. Rule 3 (8)(c) of the Rules and the related Schedule I provides that the Review Committee while examining a case shall consider the possibility of the officer under suspension tampering with the evidence, his influencing the process of enquiry or investigation and deprivation of his services during suspension.

39. It is found from the file that before convening the meeting of the Review Committee, it was the practise of the Committee to call for a report from the Director, Vigilance and Anti Corruption, as to whether there was any objection for revocation of suspension. The Director never said that in case the suspension was revoked, the petitioner would tamper with the evidence or influence the process of investigation. The Director always opined that it is for the Government to take a decision. Even after completion of investigation and filing charge sheet before the Special Court, when remarks were called for by the Review Committee, the Director without making any adverse comments against the petitioner, maintained that it was for the Government to decide the question of extension of suspension. There were absolutely no materials before the Review Committee suggesting any kind of attempt made by the petitioner to tamper with evidence or influencing the process of investigation. Even then, the Review Committee resolved to continue the suspension from time to time.

40. The final WEB meeting was held on 8 July 2016. It is to be mentioned here that by the time the meeting was convened, the Tribunal has already quashed the suspension by order dated 19 April 2016. In fact it was only after filing clarification petitions and obtaining stay of operation of the order dated 19 April 2016, the Review Committee Meeting was convened on 8 July 2016, to consider the extension of suspension. As usual, the Director, Vigilance and Anti Corruption made no adverse remarks against the petitioner. The Review Committee for the first time made an observation on 8 July 2016 that being a higher officer, the petitioner herein is capable of exerting pressure and

influencing witnesses. It was not the case of the Review Committee at any point of time earlier, right from the date of suspension on 1 August 2011 that there were attempts made by the petitioner to tamper with evidence or influence the witnesses or there is a possibility. The observation made on 8 July 2016 was to overcome the findings recorded by the Tribunal in its final order dated 19 April 2016 that there were no materials, or averments suggesting attempt made by the petitioner to interfere in the criminal case. Therefore, the observation contained in the report dated 8 July 2016 is only to be ignored as it was made to overcome the adverse finding recorded by the Tribunal against the Review Committee and Disciplinary Authority. In any case, no reliance could be made on any kind of adverse comments made after allowing the Original Application by the Tribunal revoking suspension and directing reinstatement.

41. Since there was no allegation till suspension was revoked by the Tribunal by order dated 19 April 2016, that there was a possibility of influencing or tampering with evidence, we reject the contention taken by the learned Advocate General that the Review Committee has recorded reasons on 8 July 2016 and as such, the order dated 19 April 2016 is liable to be set aside. We fail to understand as to how legality and correctness of the order dated 19 April 2016 revoking suspension and directing reinstatement could be tested with reference to the report of the Review Committee dated 8 July 2016. In fact, this review on 8 July 2016 itself was made by making the Tribunal to pass an interim stay of its own order dated 19 April 2016 under the guise of seeking clarification.

42. The charge against the petitioner is essentially not one of corruption. It is a case of misuse of discretionary quota, fabrication of records, causing loss to the Housing Board and illegal gain on account of joint venture. He was accused of issuing two proceedings with the same number and date, and ante dating records to facilitate the first accused Vinodhan, Inspector of Police, to cheat the Tamil Nadu Housing Board and for his illegal gain. Similarly, it was alleged that he helped Thiru.Pandian, Security Officer of the then Chief Minister and the same resulted in the second charge. The third charge was misuse of discretionary quota by entering into a joint venture agreement with a builder.

43. It is seen from the original file that before deciding the question of sanction for prosecution, Central Government called for particulars from the State Government and after perusal of the imputations observed in its order that the petitioner is accused of violating the procedure and provisions in granting prior permission to his subordinates. However, no pecuniary gains or quid pro quo has been established against him. Therefore, no case is made out for sanction of his prosecution. This was also the finding in the related two cases

in respect of which sanction was requested.

44. Since the satisfaction arrived at by the Central Government that no case is made out for grant of prosecution sanction against the petitioner is relevant for deciding the issue involved in this matter, we extract one of such orders here :-

No.26011/30/2013-IPS II
Government of India
Ministry of Home Affairs
North Block, New Delhi 01
Dated the 19 May 2014.

ORDER

WHEREAS Shri M.S.Jaffar Sait, IPS (TN:86) was holding the post of IGP (Intelligence), Tamil Nadu, Chennai during the period from 18.5.2007 to 31.12.2010;

2. AND WHEREAS, a criminal case was registered against him on 01.13.2012 by the Directorate of Vigilance and Anti Corruption, (DVAC), Tamil Nadu, Chennai under the Prevention of Corruption Act, 1988;

3. AND WHEREAS, it was alleged by the DVAC, Tamil Nadu in its investigation report that Shri. M.S.Jaffar Sait, while holding the post of IGP (Intelligence), Tamil Nadu had accorded prior permission to his subordinate Shri. P.Pandian (the then Police Inspector and PSO to the former Chief Minister, Tamil Nadu) for transactions in immovable property, by ante dating the records;

4. AND WHEREAS, on the basis of investigation report, the Government of Tamil Nadu forwarded a proposal to this ministry to accord prosecution sanction against Shri M.S.Jaffar Sait, IPS under the Prevention of Corruption Act, 1988;

5. AND WHEREAS, on examination of the case records, it has been observed that Shri Jaffar Sait violated the procedure and provisions in granting prior permission to his Subordinate Shri. P.Pandian (the then Police Inspector and PSO to the former Chief Minister, Tamil Nadu) for different transactions in immovable property in the name of Smt.P.Meena (wife of Shri Pandian) on the basis of an ante-dated application. However, no pecuniary gains and quid pro quo has been established by the Inquiring Authority against Shri Jaffar Sait;

6. AND WHEREAS, the Government of India having fully examined the material placed before it, as per extant rules and procedure, and considering all the facts and circumstances of the case, is satisfied that no case is made out for grant of prosecution sanction against Shri M.S.Jaffar Sait under the Prevention of Corruption Act, 1988;

7. NOW THEREFORE, in exercise of the powers conferred under Section 19 of the Prevention of Corruption Act, 1988, the Government of India hereby conveys its decision to decline prosecution sanction against Shri M.S.Jaffar Sait, IPS (TN:86)

(By order and in the name of the
President of India)

Under Secretary
to the Government of India

45. It is true that the State Government has challenged the orders passed by the Central Government including the above order before this Court. However, the High Court was not inclined to grant stay. The Review Committee was expected to consider the relevant observation made by the Central Government, in those three orders, while taking a decision to extend the period of suspension. Admittedly, no such effort was taken by the Review Committee. It is to be mentioned here that the Central Government is the Appointing Authority of the petitioner. The finding recorded by the Central Government in those orders denying sanction is therefore binding on the Disciplinary Authority, until the orders are set aside in the manner known to law.

46. Even otherwise, it would not be possible for the petitioner to tamper with the evidence or influence the process relating to the criminal cases. The Vigilance and Anti Corruption Department has already laid the charge sheet in one case, which was stayed by the Writ Court. In the other two cases, the Directorate has completed the investigation. However, charge sheet could not be fled for want of sanction for prosecution. The witnesses are government officials and the evidence is documentary. The scope of oral evidence is very limited. In view of the completion of investigation, it cannot be said that there is a possibility of the officer tampering with evidence or his influencing the process of enquiry or investigation, which are the parameters to be considered as per Rule 3(8)(c) and Schedule I of the Rules, while taking a decision whether extension of suspension is necessary.

47. The proceedings of the Review Committee does not contain any indication that these vital factors were taken note of before placing the petitioner under prolonged suspension. The

other aspect, namely, the deprivation of the services of the petitioner during suspension never attracted the attention of the Review Committee or the disciplinary authority. The order of suspension was extended periodically more as a ritual without making any attempt to consider the issue objectively, taking into account the spirit of the Rules and more particularly Rule 3(8)(c) and Schedule I. We are therefore of the view that the extension of suspension was not with valid reasons and it was an arbitrary exercise of power.

48. "The Hindu", on 10 January 2017, reported that the Directorate of Vigilance and Anti Corruption, a premium agency of the State, entrusted with the task of tackling corruption in public administration, has remained vacant without a head since 2013. There are three posts of Inspector General of Police and out of that, two have remained vacant for close to five years. Similar is the case with the regular police establishment, both law and order and crime detection. While considering the question of deprivation of the services of a delinquent officer, during suspension, the vacancy position is also a relevant factor. The services of senior officers like the petitioner could be utilized by appointing in non sensitive posts, so that other officers could be relieved and posted to fill up the vacancy in sensitive posts, requiring man power. This aspect was never considered by the Review Committee in the case of the petitioner, notwithstanding the rule mandating such consideration while reviewing the case for further extension of suspension.

Supply of documents:-

49. The request made by the petitioner for supply of documents referred to in the charge memo was rejected by the disciplinary authority. The said order was challenged in O.A.No.1886 of 2014. The Tribunal allowed the original application.

50. It is the contention of the State that there is no statutory requirement for supplying copies of documents along with the charge memo. According to the State, it was only after the appointment of Inquiry Officer, documents have to be provided to the delinquent.

51. The Tribunal placed reliance on the service rules and the departmental instructions to arrive at a finding that the delinquent is entitled to the copies of documents for the purpose of submitting explanation to the charge memo.

52. The relevant Rules are extracted below :-

8(6) (a) On receipt of the written statement of defence the disciplinary authority may appoint, under sub-rule (2), an inquiring authority for the purpose of

inquiring into such of the articles of charge as are not admitted and where all the articles of charge have been admitted by the member of the Service in his written statement of defence, the disciplinary authority shall record its finding on each charge and shall act in the manner laid down in rule 9. (b) If no written statement of defence is submitted by the member of the Service, the disciplinary authority may, if it considers it necessary to do so, appoint under sub-rule (2), an inquiring authority for the purpose. (c) Where the disciplinary authority appoints an inquiring authority for holding an inquiry into such charge it may by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

8(7) The disciplinary authority shall forward to the inquiring authority— (i) a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour; (ii) a copy of the written statement of defence if any submitted by the member of the Service; (iii) a copy of the 38[statements] of witness, if any, referred to in sub-rule (4) (iv) evidence proving the delivery of the documents referred to in sub-rule 4 to the member of the Service; and (v) a copy of the order appointing the "Presenting Officer".

53. A cumulative reading of the rules extracted above clearly shows that the documents relied on by the Disciplinary Authority have to be furnished to the delinquent and proof of such delivery has to be produced before the inquiry authority. Since documents have to be furnished to the delinquent, even before his appearance before the inquiry Authority, it is clear that the stage for such delivery is prior in point of time. The only occasion for furnishing documents is therefore while giving charge memo to the delinquent.

54. The rules have to be given a workable interpretation. The purpose of providing documents is to enable the delinquent to submit a comprehensive reply to the charge memorandum. The rule provides that the delinquent has to submit a written statement of defence. In order to prepare such defence, he should have in his possession, all the documents referred to by the Disciplinary Authority in the charge memo. In case, on a perusal of the written statement of defence, the disciplinary

authority is of the view that explanation is satisfactory, there is no need for proceeding further. Therefore, it would be the endeavour of the delinquent to incorporate all his pleas and explanations in the written statement so as to enable him to persuade the disciplinary authority to drop the charges. Such a reasonable opportunity would be denied, in case the delinquent is not permitted to obtain copies of documents. Permission to peruse the voluminous documents would not serve the purpose.

55. The state is not claiming that the documents are privileged communications or privileged documents and as such, they are not bound to give copies. The fact that the State is prepared to show the documents to the petitioner for perusal, clearly shows that none of the documents are privileged. In case copies of these documents can be taken by using the provisions of Right to Information Act, there is no reason to deny permission, when a request was made to provide copies of documents for preparing the written statement. We therefore concur with the views expressed by the Tribunal, and reject the challenge made by the State to the order in O.A.No.1886 of 2014.

Strange procedure adopted by the State:-

56. The State without challenging the final order dated 19 April 2016, passed by the Tribunal in the original application, strangely filed petitions to clarify the final order. The state also filed an application for stay of the final order.

57. The Tribunal adopted a novel device to put its order in cold storage by entertaining clarification petitions and stay petitions. The State by making use of the interim stay, extended the suspension. The effect is that in spite of the order directing revocation of suspension and reinstatement, the state managed to extend the suspension and keep the petitioner out of service.

58. The Tribunal was not correct in entertaining clarification petitions and stay petitions to stay the final order. The Tribunal exceeded its jurisdiction by granting an order of stay of operation of the final order dated 19 April 2016, pending disposal of clarification petitions.

Restitution:-

59. The Tribunal committed an illegality by not passing orders to restore status quo ante, while dismissing the clarification petitions. The State Government passed another order extending suspension, in spite of the order directing reinstatement. In such a case, the Tribunal was expected to pass an order of restitution. The petitioner was put to a disadvantageous position on account of the strange interim order granted by the Tribunal. The order passed by the Government on 12 July 2016 pursuant to the interim order cannot continue after

the dismissal of the clarification petitions and the related stay petitions.

The law on the subject of restitution:-

60. The Supreme Court in *South Eastern Coal Fields vs. State of Madhya Pradesh*, 2003(8) SCC 648, observed that the litigant should not be allowed to enjoy the benefits yielding from interim orders, in case, the battle has been lost at the end. The affected party in such a case is entitled to restitution. The courts have an obligation to undo the injury caused to a party to the litigation as no one shall suffer by an act of Court.

61. In *Karnataka Rare Earth and another vs. Senior Geologist, Department of Mines & Geology and another*, (2004 (2) SCC 783), the Supreme Court observed that party who succeeds ultimately is to be placed in the same position, in which he would have been if the court would not have passed an interim order.

62. The Supreme Court in *Amarjeet Singh & Ors. Vs. Devi Ratan and others*, (2009 (14) Scale 149) indicated the effect of interim orders after the dismissal of the substantive proceedings.

The Supreme Court observed:

"15. No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically."

63. In the subject case, the interim order granted by the Tribunal helped the Government to keep the petitioner under prolonged suspension for another period of 180 days. However, we are not interfering with the order dated 12 July 2016 as its validity expired by efflux of time on 11 January 2017.

64. In view of the reasons aforesaid, we are in respectful agreement with the views expressed and the findings recorded by the Tribunal that the prolonged suspension in the subject case is nothing but an arbitrary exercise of power and it was not a sound exercise of discretion. We therefore, revoke the suspension with immediate effect.

DISPOSAL:-

65. We confirm the order passed by the Tribunal in O.A.No.1886 of 2014, directing the Disciplinary Authority to furnish copies of documents referred to in the charge memorandum and the related order in O.A.No.1144 of 2015, directing reinstatement of the petitioner into service. It is open to the

State to post the petitioner in any of the non sensitive posts. There shall be a further direction to the State to pass consequential orders for reinstatement and posting, on or before 18 January 2017.

66. The Writ Petitions filed by the State in W.P.Nos.175 and 176 of 2017 are dismissed. The Writ Petitions in W.P.Nos.48 and 49 of 2017 are allowed as indicated above. No costs. Consequently, W.M.P.Nos.41 to 46 and 170 to 172 of 2017 are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

- 1 The Secretary
The Ministry of Home Affairs
North Block New Delhi-110 001
- 2 The Principal Secretary to Government
Home (SC) Department Fort St. George
Chennai-600009
- 3 The Deputy Superintendent of Police
Vigilance and Anti-
Corruption Chennai City-I Detachment
Chennai-600028
- 4 The Secretary to Union of India,
Ministry of Personnel and Training,
North Block, New Delhi.
- 5 The Registrar,
Central administrative Tribunal,
Madras Bench, Chennai.

+2 cc to M/s.Ahmed associates,sr.2954 & 2955

+1 cc to Govt.Pleader,sr.3140.

kgk(co)
krd 12/1

W.P. Nos.48, 49, 175 and 176 OF 2017