



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.09.2016

Delivered on : 17.07.2017

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CORAM :

THE HONOURABLE MR.JUSTICE **NOOTY.RAMAMOohana RAO**

and

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Writ Appeal (MD) No.1259 of 2015

and

C.M.P. (MD) No.5343 of 2016

and

C.M.P. (MD) No.5958 of 2016

1. The State of Tamil Nadu rep. by
The Principal Secretary & Secretary to Government,
Revenue Department,
Secretariat, Chennai - 600 009.
2. The Additional Chief Secretary,
Principal Commissioner of Revenue Administration,
Ezhilagam, Chempauk,
Chennai - 600 005.
3. The District Collector,
Collectorate,
Madurai District,
Madurai.

: Appellants / Respondents

-Vs-.

S.Senthil : Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 06.10.2015 made in W.P.(MD) No.8232 of 2015.

Prayer in WP(MD). 8232/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus to call for the records on the file of the respondents 3,2 and 1 in connection with the orders passed by them in their proc. Na.Ka.No.PaA5/52656/2012 dated 18.6.2013 and Na.Ka.No.Pani 3 (2)/36083/2013 dated 20.12.13 and G.O.(2T)No.397 dated 03.07.2015 respectively and quash the same and direct the respondents to reinstate the petitioner with all monetry and



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For Appellants

: Mr.B.Pugalendhi
Additional Advocate General

For Respondent

: Mr.R.Singaravelan
Senior Counsel for
Mr.D.Selvanayagam

JUDGMENT

NOOTY.RAMAMOHANA RAO, J.

AND

S.S.SUNDAR, J.

This Writ Appeal has been filed by the respondents in W.P.(MD)No.8232 of 2015 calling in question the order of learned Single Judge allowing the Writ Petition, W.P.(MD) No.8232 of 2015 and remitting the matter back to the disciplinary authority for fresh consideration.

2.The Writ petitioner / the respondent herein while working as Head Clerk in the office of Revenue Divisional Officer, Madurai, was dismissed from service by the third appellant herein by order dated 18.06.2013. On appeal by the writ petitioner, the second appellant confirmed the order of dismissal. Challenging the order of second appellant, the writ petitioner filed a revision before the first appellant on 31.01.2014. Pending revision, the writ petitioner filed an earlier writ petition in W.P.(MD)No.7007 of 2004 for issuing a writ of mandamus directing the Principal Secretary of Government to consider his revision petition and a learned Single Judge of this Court disposed of the writ petition on 23.04.2014 directing the Government to consider the revision dated 31.01.2014 and to pass orders on the same on merits within a period of 12 weeks from the date of receipt of a copy of the order.

3.Thereafter, even before the disposal of revision, the respondent herein filed the present writ petition W.P.(MD)No.8232 of 2015 for issuing a writ of Certiorarified Mandamus to quash the order of the second appellant dated 20.12.2013, confirming the order of dismissal passed by the third appellant on 18.06.2013 and to reinstate the respondent herein with all monetary and service benefits. During the pendency of the writ petition, the first appellant dismissed the revision petition filed by the writ petitioner on 15.05.2014, by order dated 03.07.2015 vide G.O.Ms.No.397, Revenue Department. Thereafter, the writ petitioner by way of amendment introduced the further prayer to quash the order of first appellant dated 03.07.2015 as well.

<https://hcservices.ecourts.gov.in/HCServices> convenience, the facts leading to the filing of Writ Petition by the respondent can be summarised as follows:



(a) While the writ petitioner / respondent was serving as Head Clerk (In the Deputy Tahsildar Cadre) in the office of Revenue Divisional Officer, Madurai, a charge memo dated 11.08.2012, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued against him by the third appellant.

(b).The following are the three charges (Translated version) :

(i) As per the Tamil Nadu Government Servants' Conduct Rules, 1973, no Government servant should without the prior permission of the Government engage himself either directly or indirectly in any trade, commerce or business. However, the delinquent, unconnected with his work, with an intention and object of making profit has made an attempt to change the survey number and subdivisions of land in S.No.33/1 in Siruthur Village, Madurai North Taluk. Further, in relation to the said lands he has signed a sale agreement dated 24.07.2008 and a deed of solemn undertaking dated 16.11.2009. Thereby he conducted himself in violation of Rule 8 of Tamil Nadu Government Servant Conduct Rules, 1973.

(ii) That he had acted with ulterior motive and violated Tamil Nadu Government Servants' Conduct Rules, 1973 and thereby was responsible to bring disrepute to the District Administration and caused stigma on the District Administration and Government Servants.

(iii) That he had acted in violation of Rule 20 (1) of the Tamil Nadu Government Servants' Conduct Rules, 1973, by failing to maintain absolute integrity and devotion to duty as Government Servant.

(c) In the charge memo, the sale agreement dated 24.07.2008 and the deed of undertaking dated 16.11.2009 were shown in the list of documents to prove the charges.

(d) Since the main argument of both sides rest on the nature and contents of those two documents, it is necessary to reproduce the relevant clauses in the two documents and the nature of transaction.

(i) Sale agreement dated 24.07.2008.

This sale agreement was entered into between one Thiru.Radhey Shyam Agarwal as purchaser (first party) and one M.Ilayaraja as seller (second party) in respect of land measuring an extent of 6 acres in Survey No.33/1 in Siruthur Village for a total sale consideration of Rs.3 crores.

<https://hcservices.ecourts.gov.in/hcservices/> The respondent herein namely the writ petitioner has of course signed only as an attestor. However, every payments made by purchaser pursuant to this agreement is acknowledged only by

the respondent herein as recited in this agreement. As per this agreement, the respondent Senthil is expected to act as a guarantor for the property on behalf of the seller. Under this agreement, the purchaser has undertaken to pay a sum of Rs.50,00,000/- to the respondent herein on or before 30.07.2008 out of which the receipt of the sum of Rs.5,00,000/- was acknowledged. It is recited in this agreement that the respondent should make necessary effort to give sufficient documents to get patta through the Revenue Department at the cost of purchaser and that the purchaser shall register after paying the balance amount of Rs.2.5 crores to the respondent within thirty days from getting patta. Except getting opinion from Government Pleader and providing money, for all other things, the respondent Senthil alone is responsible. The relevant clause in the sale agreement are also extracted for convenience:

“பட்டாவை வருவாய் துறை முலம் திரு.செந்தில் அவர்கள் அனைத்து முயற்சிகளும் தேவையான ரிக் கார்டுகளை கொடுத்து முழு ஒத்துழைப்பின் லவது பார்ட்டியின் செலவில் பெற்றுதர வேண்டியது என்றும், பட்டா கிடைக்கப் பெற்ற 30 தினங்களில் மீதி கிரைய பாக்கி தொகை ரூ.2½ கோடி (இரண்டரை கோடி மட்டும்) திரு.செந்தில் அவர்களிடம் லவது பார்ட்டி கொடுத்து பதிவு செய்து கொள்ள வேண்டியது.

மேலும் ம.இளையராஜாவாக்கு முழுப் பொறுப்புேற்று நடத்திவரும் திரு.எஸ்.செந்தில் அவர்களே பண வரவு-செலவு, மற்றும் அரசு வழக்கறிஞரின் கருத்துரையை பெறுவது தவிர்த்து மற்ற அனைத்து நடவடிக்கைகளுக்கும் முழுப் பொறுப்புாகும் என உறுதி கூறும் வகையில் இந்த ஒப்பந்தத்தில் அவரே லவது சாட்சியாக கையொப்பம் செய்துள்ளார்.”

It is to be noted that the receipt of a sum of Rs.1.92 Crores from the purchaser is acknowledged only by the respondent by way of endorsements in this document and it has been recited that the respondent has signed in this agreement as first witness only to confirm his full responsibility.

(ii) Deed of undertaking dated 16.11.2009 titled as "உறுதிமொழிப் பத்திரம்:".

This document was executed on 16.11.2009 by the respondent in favour of the purchaser, Radhey Shyam Agarwal who has agreed to purchase the land under the sale agreement dated 24.07.2008. The respondent described himself as the Revenue Inspector of Madurai South Taluk in this document. Though the date of sale agreement is wrongly mentioned, the reference to the first document is not in dispute. This document is executed as an agreement between the respondent and the purchaser. While the respondent puts the agreement holder in possession, he once again acknowledge the receipt of a sum of Rs.60,00,000/- between 09.07.2008 and 18.09.2008 on the undertaking that it would be his responsibility to get patta through the Revenue Department for the land in question and the endorsements made by him in the sale agreement. Since there was no progress in the matter from 24.07.2008 to 16.11.2009 and additional expenses were to be incurred due to the reason that they were forced to approach Commissioner of Land Administration and Director of Survey it is stated in this agreement that the purchaser has paid a further sum of Rs.10,00,000/- to the respondent at his request. Further, in



this agreement the respondent has agreed and undertaken to get patta for the land within 60 days from 16.11.2009 and promised to repay not only the sum of Rs.70,00,000/- but also an additional amount of Rs.70,00,000/- in all a sum of Rs.1,40,00,000/- on the sixty first day, if he is not able to get patta. Respondent further agreed that he would abide by whatever legal action that the purchaser may initiate against him if the respondent failed to get patta for the land. Further, the respondent has also taken the responsibility to get pathway (access) to the property agreed to be sold earlier. For convenience, the relevant portion of the agreement is extracted below:"

"கீழ்க்கண்ட சொத்திற்கு நாளது தேதியில் பட்டா இல்லை. ஏனவே வருவாய் துறை மூலம் பட்டாவை பெற்று தருவது தன்னுடைய பொறுப்பு, என உறுதி கூறி திரு. செந்தில் ஆகிய நான் ராஜே தசியாம் அகர் வாலிடமிருந்து ரூபாய் 60,00,000/- ரொக்கப் பணத்தை 09.07.2008 முதல் 18.09.2008 வரையில் பெற்றுக் கொண்டு 24.09.2008 தேதியிட்ட கிரைய ஒப்பந்தத்தில் தேதிவாரியாக வரவ , செய்து கொடுத்துள்ளேன். ஆனால் பட்டா பெற்று தருவதில் 24.09.2008 முதல் 16.11.2009 வரை எவ்வித செயல்பாடுகளும் இல்லாத காரணத்தால் கடைசியில் சென்னை **CLA and Dos** ஆகியோரிடமிருந்து முறையிட வேண்டிய நிர் பந்தம் ஏற்பட்டு அது விஷயமாக கூடுதல் செலவ , ஏற்பட்டமையால் (பட்டா வாங்குவதற்கு) திரு. ராதேஷியாம் அகர் வால் அவர்களிடம் திரு.செந்தில் ஆகிய நான் கேட்டதற்கு அவரும் சம்மதித்து மேலும் கூடதலாக ரூபாய் 10,00,000/- (ரூபாய் பத்து லட்சம்) கொடுத்ததை பெற்றுக் கொண்டேன். ஆக மொத்தம் ரூபாய் (60,00,000/- 10,00,000/-) 70,00,000/- ரூபாய் எழுபது லட்சம்) நாளது தேதி முடிய கணக்கின் படி சரி. 16.11.2009 முதல் 60 நாட்களுக்குள் நான் பட்டா கிடைக்க ஏற்பாடு செய்வதாக ஒப்புக் கொண்டு இந்த உறுதி மொழி பத்திரத்தில் கையெழுத்திட்டுள்ளேன். தவறும் பட்சத்தில் நான் தங்களுக்கு அசல் 70,00,000/- அதிகப்படியாக மேலும் 70,00,000/- சேர்த்து ஆக 1,40,00,000/- (ஒரு கோடியே நூற்பது லட்சம்) 61 வது நாளன்று கொடுத்து விட சம்மதித்து கீழ்க்காணும் சாட்சிகளின் முன்னிலையில் உறுதி மொழி பத்திரம் எழுதி கொடுத்துள்ளேன். மேற்கண்டபடி நான் (செந்தில்) பட்டா பெற்று தராமலோ, காலதாமதமோ ஆகும் பட்சத்தில் திரு.ராதேஷியாம் அகர் வால் அவர்களால் என்மீது எடுக்கும் சட்டபூர்வ நடவடிக்கைக்கு கட்டுப்படுவேன் என்று இதன் மூலம் உறுதி அளிக்கிறேன். மேற்படி இடத்திற்கு பாதை பெற்று தரவேண்டியது என் பொறுப்பாகும்."

It was only on the basis of these two documents, the involvement of respondent in the sale transaction was presumed and the promise he has made to get patta for the lands upon receipt of a fabulous sum of Rs.70,00,000/- prompted the disciplinary authority to frame charges.

(e) The respondent submitted his explanation dated 11.09.2012 for the charges briefly as follows:

For the first charge:

In the unregistered sale agreement, he has just signed as a witness as a person knowing the owner of the land. In the land dealing, his name was not referred to as a power agent or owner or partner. Hence, he was not involved in the transaction. As a friend of Ilayaraja (Seller in the agreement) he stood as a guarantor for the money paid to Ilayaraja in order to help Ilayaraja. In the agreement dated 16.11.2009 also he has signed as a guarantor at the request of purchaser. Since he is only an ordinary servant in the Revenue Department, he cannot change the revenue accounts. Hence, the charge itself has been framed on a wrong basis with ulterior motive."



For charge No.2

"Having regard to the explanation given for charge 1, he has not brought disrepute to the District Administration."

For Charge No.3

"For the reasons stated for the first two charges, he has not acted in a manner contrary to Rule 20 of Tamil Nadu Government Servants' Rules, 1973."

Apart from the explanations with reference to specific charges it was stated by the respondent that his position in the sale transaction was nothing more than a middle man between the buyer and seller and that he has not received any monetary benefit. He also stated that the money paid to him by the buyer has been paid to Ilayaraja who had acknowledged in his letter which was annexed to the explanation. He further relied upon two subsequent agreements executed by the original owners in favour of Radhey Shyam Agarwal and contended that the sellers are ready to register the sale deeds. It is important to note that in his explanation the respondent did not deny the two documents referred to in the charge sheet.

(f) An Enquiry Officer was appointed to inquire into the charges framed against the respondent on 18.10.2012 and fair opportunity was given to him. He examined several witnesses to give evidence contrary to the two documents signed by the respondent and deposed that the role of respondent is only as a guarantor for the money received by Ilayaraja from the purchaser. The purchaser who gave the complaint against the respondent gave a statement before the Enquiry Officer about the involvement of respondent in the sale transaction. Though there was change of Enquiry Officer on few occasions the enquiry was continued and completed by the District Supply Officer, Madurai, who submitted a report holding that all the three charges against the respondent are proved. Since there was no patta for the land involved in the sale transaction, the contents of the sale agreement and the fact that the respondent has acknowledged every payment that was made by the purchaser were taken note of to hold that the respondent had involved himself in the sale agreement. (Surprisingly, the Enquiry Officer omitted to consider the very important document namely the deed of undertaking dated 16.11.2009 which is a crucial document to prove the charges).

(g) The disciplinary authority, the third appellant, thereafter by communication dated 12.04.2013, called for further explanation to the report of Enquiry Officer and the enquiry report was also served on the respondent. The disciplinary authority further suggested that the respondent can be given a personal hearing if he requires.

(h) A detailed explanation was submitted by the



respondent in May 2013 challenging the findings of the Enquiry Officer mainly on the ground that the report is designed to grab the land from his friends without paying the balance amount as per the agreement. It was contended by the respondent that standing as a surety for a friend or to act as a mediator is not against conduct rules. Since the agreement relied upon by the Enquiry Officer does not disclose any payment to the respondent by way of profit, the respondent further contended that the findings of Enquiry Officer was only to satisfy his higher officer to get the land for the complainant. Respondent's further grievance was about the failure of Enquiry Officer to consider the statements of other witnesses who were examined on his side. He also requested the disciplinary authority to hold an enquiry to bring out the truth.

(i) The disciplinary authority after getting explanation from the respondent, sent a communication to the respondent to appear before him on 04.06.2013 at 5.00 p.m. To avail an opportunity of personal hearing. However, the respondent sent a reply on 04.06.2013 stating that any further enquiry without getting any explanation from the Enquiry Officer about his failure to enquire into and consider the aspects pointed out by him in his explanation will disable him to prove that the charges against him are false and that the truth of his case could only then be considered. However, later he also appeared in person and availed personal hearing.

(j) The disciplinary authority, the third appellant herein then passed an order on 18.06.2013 dismissing the respondent from Government service. The disciplinary authority after extracting the charges, respondent's explanation, the findings of Enquiry Officer and the respondent's further explanations took into consideration the following facts:

(1) The entire extent of 64.5 acres in Survey No.33/1 in Siruthur Village, Madurai North Taluk is registered as Government poramboke - Siruthur Chinna Kanmoi' in the village accounts.

(2) The respondent has signed as a witness in an unregistered sale deed in respect of a Government poramboke land, knowing that there was no patta for the land and has acknowledged the receipt of total amount of Rs.1.92 crores paid on various occasions towards the sale transaction.

(3) The respondent has undertaken to get patta for the lands which are registered as Government poramboke land, through Revenue Department.

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

(4) By executing another unregistered document dated 16.11.2009 the respondent has acknowledged the



receipt of a sum of Rs.60,00,000/- and received a further sum of Rs.10,00,000/- towards additional expenditure for approaching Commissioner of Land Administration and Director of Survey and Settlement Office to get patta.

(5) In the document dated 16.11.2009, the respondent has agreed to make arrangements to get patta within 60 days upon assurance that he would repay the sum of Rs.70,00,000/- which he had received to get patta along with a further sum of Rs.70,00,000/-.

(k) Based on the above facts, the disciplinary authority agreed with the findings of the Inquiry Officer and rejected the contentions of respondent that he is not involved in the sale transaction and that he stood just as a surety to help his friend for the huge money paid to the seller pursuant to the sale agreement. After an assessment of admitted facts and evidence, the disciplinary authority has further drawn his conclusions after considering the respondent's statement of objections / further explanations to the inquiry report. Finally the disciplinary authority passed an order dismissing the respondent from service.

(l) The final order reveals that the disciplinary authority has come to the definite conclusion that the respondent is guilty of serious misconduct by involving himself in a commercial transaction and that the act of respondent spoiled the decorum and dignity and modesty of the official machinery apart from bringing bad name to the District Administration in the minds of public. Further, the disciplinary authority also found that the respondent had compromised the official propriety and undermined the standards of official behaviour which are highly condemnable.

(m) Aggrieved by the order of dismissal, the respondent herein, preferred an appeal before the Additional Chief Secretary, the second appellant herein. Before the appellate authority, the respondent challenged the findings of disciplinary authority on several grounds. It can be seen that the respondent herein in the appeal challenged, the conclusions of the disciplinary authority focussing the same points pleaded by him in defense apart from alleging *mala fides*. Of course, the respondent has also raised an issue that the disciplinary authority has come to certain conclusions touching the conduct of respondent which are not found in the charge memo which was originally given to him.

(n) The appellate authority also confirmed the order of dismissal by a proceedings dated 20.12.2013. Though the appellate authority extracted the charges against the respondent, the explanations submitted by the respondent to the charges, the findings of the disciplinary authority and the points that were raised by the respondent in the appeal, the order of the appellate

authority is cryptic and the only reason assigned by the authority reads as follows:

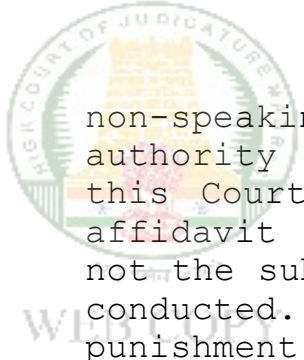
தனியரின் மேல்முறையீட்டு மனு, தொடர்புடைய ஆவணங்கள் மற்றும் தனியர் 22.10.2013 அன்று கூடுதல் தலைமைச் செயலர் / வருவாய் நிர்வாக ஆணையர் முன்பாக நேரில் ஆஜராகி அளித்த வாக்குமூலம் ஆகியவற்றின் அடிப்படையில் சுயமாகவும், கவனமாகவும், ஆழ்ந்தும் பரிசீலனை செய்யப்பட்டது. மாவட்ட ஆட்சியரின் ஆணையில் தலையிடுவதற்கான போதிய காரணங்கள் ஏதும் இல்லாத நிலையில், தனியரது மேல்முறையீட்டு மனுவின் நிராகரிக்கலாம் என முடிவு செய்து அவ்வாறே ஆணையிடப்படுகிறது. (Connected records relating to the appeal and the statement given by the appellant before the Additional Chief Secretary were independently, carefully and deeply considered. Since there are no sufficient grounds to interfere with the order of District Collector it is decided to dismiss the appeal and accordingly ordered.)

(o) Against the order of the appellate authority, the respondent herein preferred a revision before the Government on 31.01.2014. Thereafter, he filed a Writ Petition in W.P.(MD) No.7007 of 2014 for an early disposal of revision and this Court allowed the Writ Petition on 23.04.2014 directing the Government to pass orders on the revision on merits within a period of twelve weeks. It appears that he has also preferred another revision on 15.05.2014. After filing the revision before the Government, the respondent filed a writ petition in W.P.No.8232 of 2015 challenging the order of second appellant dated 20.12.2013 confirming the order of disciplinary authority dated 18.06.2013 dismissing the respondent from service.

5.It is very much relevant to point out that the respondent herein has raised only the following grounds in the writ petition.

- (a) The order of disciplinary authority as well as the appellate authority reveals that neither there is any reason nor any discussion.
- (b) The order of disciplinary authority as well as the appellate authority is arbitrary being violative of Articles 14, 16 and 21 of the Constitution of India.
- (c) The impugned orders of disciplinary authority as well as the appellate authority are tainted with *mala fide* motive and illegalities.
- (d) The order of disciplinary authority as well as the appellate authority is discriminative, vindictive and motivated.

6.In the affidavit filed in support of the writ petition, the respondent blamed the disciplinary authority for putting unnecessary questions accusing the respondent of the charges framed against him and stated further that the disciplinary authority has not followed the procedure prescribed under Rule 18 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The respondent described the order of the second appellant as a



non-speaking order, apart from contending that the revisional authority has not passed the order within the time stipulated by this Court earlier. The respondent also raised a point in the affidavit that the order of dismissal contains reasons which are not the subject matter of the charge memo on which the enquiry was conducted. Consequently, the respondent also submitted that the punishment awarded to him was for certain allegations for which there was neither any charge, nor an enquiry. The respondent also contended that a Government servant cannot be punished unless there are some concrete evidence to punish the delinquent and that a person cannot be punished on mere suspicion.

7. After the filing of the writ petition, the Government passed an order on 03.07.2015 in the revision, filed by the respondent, confirming the order of the second appellant who in turn had confirmed the order of third appellant namely the disciplinary authority. It was thereafter, the prayer in the Writ Petition was amended to include the order passed by the Government in revision dated 03.07.2015, a subject matter of challenge. However, no additional grounds. The appellants seriously contested the writ petition and the third appellant filed a detailed counter affidavit.

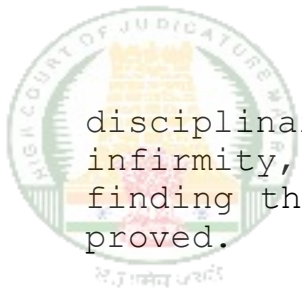
8. The writ petition was allowed by the learned Single Judge of this Court, of course, by setting aside the order of the Government dated 03.07.2015 and the orders of disciplinary authority and appellate authority and remitting the matter to the third appellant, the disciplinary authority, for fresh consideration.

9. The learned Single Judge found that the disciplinary authority instead of considering the case of the petitioner on the basis of the three charges framed against him, gone beyond the scope of the charges framed against the respondent and added new charges in the order of dismissal dated 18.06.2013. Further, the learned Single Judge also found that the revisional authority has committed yet another mistake by not serving the copy of the report obtained from the Tamil Nadu Public Service Commission which was the basis for the revisional authority to confirm the order of the appellate authority.

10. The present appeal is therefore preferred by the respondents in the writ petition.

11. Heard the learned Additional Advocate General appearing for the appellants and Senior Counsel Mr. Singaravelan for the respondent / Writ petitioner.

12. The learned Additional Advocate General submitted that the charges framed against the respondent are grave in nature and that he was given ample opportunity. The order of the



disciplinary authority, according to him, does not suffer from any infirmity, as the disciplinary authority has given a categorical finding that the charges framed against the respondent, have been proved.

13. Secondly, the learned Additional Advocate General submitted that the order of the learned Single Judge is erroneous as the learned Single Judge has treated the factual findings arrived at by the disciplinary authority as additional or fresh charges, on a wrong assumption of facts. After referring to the order of the disciplinary authority, the learned Additional Advocate General, further submitted that the order of the disciplinary authority is well balanced and well founded with regard to the three charges that were framed against the respondent. The learned Additional Advocate General contended that the observation of the learned Single Judge that the disciplinary authority added new charges in the order of dismissal is factually incorrect and the reading of the whole order would certainly disclose the wrong assumption of factual position by the learned Single Judge.

14. The learned Additional Advocate General further contended that the punishment can be sustained for the proved original charges, de hors the alleged new charges as the respondent has committed serious misconduct, which can never be tolerated in the interest of maintaining the discipline, order and the well being of the Revenue Department.

15. The learned Additional Advocate General further submitted that the revisional authority, in the present case, has not relied upon the report of the Commission for taking the decision in the revision filed by the respondent and that therefore the learned Single Judge is not right in allowing the writ petition on the ground that a copy of the report obtained from the Tamil Nadu Public Service Commission has not been served on the respondent.

16. The learned Additional Advocate General pointed out that the respondent has not denied his signature in the sale agreement dated 23.07.2008 and the deed of undertaking dated 16.11.2009. It is only because the department came to know about the involvement of the respondent in the sale transaction pertaining to a land which is registered as a government poramboke (water body) as per revenue records, the charges were framed. From the contents of the two documents the involvement of the respondent in the sale transaction is proved. The fact that the respondent has promised to get patta for the land from the Revenue Department upon receipt of a fabulous sum of Rs.70,00,000/- towards expenditure in relation to the issuance of patta for a Government property would only lead to an irresistible conclusion that the charges against the respondent are duly proved beyond



doubt.

17. However, the learned Senior Counsel appearing for the respondent put forth the following submissions:

a) As found by the learned Single Judge, the disciplinary authority has punished the respondent for allegations and reasons which are not found in the charge memo.

b) The procedure contemplated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, has not been followed inasmuch as the charge memo is not accompanied by a statement of allegations on which each charge is based;

c) The order of the appellate Court as well as the revisional authority do not contain any reason and hence, they are liable to be set aside. There is no discussion of points raised by respondent in the order of appellate authority and revisional authority and the orders are liable to be set aside for total non-application of mind.

d) The fact that the respondent has not received any commission or profit as per the sale agreement or the subsequent agreement dated 16.11.2009 is amply proved and as such the respondent cannot be charged for violation of Tamil Nadu Government Servants Conduct Rules.

e) Based on no evidence, the disciplinary authority has found the respondent guilty of all charges.

f) The revisional authority has not furnished the copy of the report obtained from the Tamil Nadu Public Service Commission and that the order of revisional authority without furnishing a copy of the report of the Tamil Nadu Public Service Commission is violative of principles of natural justice. Apart from the factual submissions on the above issues, the learned Senior Counsel for the respondent relied upon several precedents to substantiate his stand. Keeping in mind the pleading and argument of both sides, we find that the following issues arise for consideration in this appeal.

18. 1) Whether the disciplinary proceedings against the respondent is vitiated for not accompanying the statement of allegation along with the charge memo?

2) Whether the disciplinary authority has punished the respondent for allegations and reason which are not found in the charge memo?

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

3) Whether the findings of disciplinary authority are based on evidence?



4) Whether the order of Government, the revisional authority is vitiated for the failure to furnish the copy of report / recommendation of Tamil Nadu Public Service Commission to the respondent?

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5) Whether the order of learned Single Judge in the Writ Petition can be sustained?

19. The learned Senior Counsel appearing for respondent during his argument made clear that he is not arguing for remitting the matter either to the appellate authority or revisional authority for passing reasoned order but for quashing the order of disciplinary authority and to remit the matter to the disciplinary authority. In other words, he argued to sustain the order in the Writ Petition.

Point No.1.

20. In this case, the first charge is about the respondent's involvement/engagement in a commercial transaction without prior permission from Government by signing the two documents, namely, the sale agreement dated 24.07.2008 and the deed of undertaking dated 16.11.2009 executed by him. The two documents in which he is a signatory is referred to in the charge and these two documents were shown in Annexure 3 as the evidence to prove the charges. The other two charges are also based on the first charge and the documents.

21. Rule 8(1)(a) and Rule 20 (1) of Tamil Nadu Government Servant Conduct Rules, 1973 are the relevant rules referred to in the charge memo and hence, they are extracted below:

"8.Private trade or employment.-(1)(a) No Government servant shall except with the previous sanction of the Government, engage himself directly or indirectly in any trade or business or undertake any employment:

Provided that a Government servant may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of literary, artistic or scientific character, or participate in sport activities as an amateur, subject to the condition that his official duties do not thereby suffer; but he shall not undertake, or shall discontinue such work if so directed by the Government:

Provided further that nothing contained in this sub-rule shall be deemed to require a Government servant, who is nominated by the Governor as a member of an official body or a non-official body or an organisation or who seeks election as a member of a University body by virtue of the post of Principal or Headmaster or Teacher held by



him, to obtain the previous sanction of the Government for undertaking and discharging his duties as such member.

20. Integrity and devotion to duty.-- (1) Every member of the service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service.

(2) Every member of the service shall take all possible steps to ensure integrity and devotion to duty by all Government servants for the time being under his control and authority."

22. The charges and the documents referred to in the charge memo would clearly indicate that the charges are specific. The respondent has categorically admitted the execution of the documents. He explained the nature of transaction under the sale agreement and contended that he did not sign the sale agreement either as a seller or agent but as a surety for no profit. He did not give any explanation to the second document for receiving a fabulous sum of Rs.70,00,000/- to get patta for a Government property.

23. The respondent did not seek any clarification nor express any prejudice that was caused to him in the absence of particulars in the charge memo.

24. Learned Senior Counsel for respondent relied upon the judgment of Hon'ble Supreme Court in **Surath Chandra Chakrabarty vs. State of West Bengal** reported in **1970 (3) SCC 548** wherein the Hon'ble Supreme Court, after referring to fundamental Rule 55, which postulates that charges must be accompanied by a statement of allegations, held that removal of appellant from service is illegal on the ground that in spite of repeated request by the employee, statement of allegations containing the material facts and particulars relevant to the charges were not supplied to the employee. It is a case where the charges were found to be so vague and not capable of being understood.

25. In the present case, the statement of allegations regarding the misconduct is found in clear terms in the first charge. The other two charges were also framed only on the basis of the two documents. During enquiry, the respondent participated with the full understanding of the charges and no grievance expressed by respondent before the appellate authority or revisional authority or before this Court alleging inconvenience or prejudice or any legal injury suffered by respondent for not supplying independently the statement of allegations. Failure to supply statement of allegation is not always fatal. The respondent who participated in the proceedings without demur cannot raise this plea for the first time in the writ petition.



26(a) The learned Senior Counsel for the respondent relied upon a judgment of the Hon'ble Supreme Court in the case of **Union of India and others v. Gyan Chand Chattar** reported in (2009) 12 SCC 78. In paragraphs 33 to 35 of the said judgment, the Hon'ble Supreme Court has insisted the requirement of the charges to be clear, definite and specific. They are extracted as follows:

"33. In a case where the charge-sheet is accompanied with the statement of facts and the allegation may not be specific in charge-sheet but may be crystal clear from the statement of charges, in such a situation as both constitute the same document, it may not be held that as the charge was not specific, definite and clear, the enquiry stood vitiated. ([Vide State of Andhra Pradesh & Ors. vs. S. Sree Rama Rao](#), AIR 1963 SC 1723). Thus, where a delinquent is served a charge-sheet without giving specific and definite charge and no statement of allegation is served along with the charge-sheet, the enquiry stands vitiated as having been conducted in violation of the principles of natural justice.

34. [In Sawai Singh v. State of Rajasthan](#), AIR 1986 SC 995, this Court held that even in a domestic enquiry, the charge must be clear, definite and specific as it would be difficult for any delinquent to meet the vague charges. Evidence adduced should not be perfunctory even if the delinquent does not take the defence or make a protest against that the charges are vague, that does not save the enquiry from being vitiated for the reason that there must be fair-play in action, particularly, in respect of an order involving adverse or penal consequences.

35. In view of the above, law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjunctures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct."



(b). The Hon'ble Supreme Court in the case of **Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank and another** reported in (2011) 14 SCC 379 has held as follows:

"12. We also find that along with the charge-sheet dated 31.01.1989 no statement of imputations giving the particulars of the loan accounts or the names of the borrowers, the amounts of loans sanctioned, disbursed and misappropriated were furnished to the appellant, and yet the disciplinary authority has called upon the appellant to submit his written defence statement in reply to the charges. We fail to appreciate how the appellant could have submitted his written statement in defence in respect of the charges and how a fair enquiry could be held unless he was furnished with the particulars of the loan accounts or the names of the borrowers, the amounts of loan sanctioned, the amounts actually disbursed and the amounts misappropriated were also furnished in the charge-sheet.

14. This position of law has been reiterated in the recent case of **Union of India & Ors. v. Gyan Chand Chattar** (supra) and in Para 35 of the judgment as reported in the SCC, this Court has observed that the law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice and the charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges."

(c). It has to be noted in the present case that it is not the case of the respondent that he was not furnished with the particulars which form the basis of the charges against him. Further it is also not the case of the respondent that he was not able to defend the charges effectively because charges are not specific. Hence, the above judgments have no application to the facts of this case.

27. In **Kashinath Dikshita v. Union of India and others** reported in (1986) 3 SCC 229, the Hon'ble Supreme Court has held as follows:

"11. And such a stance was adopted in relation to an inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case, we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not



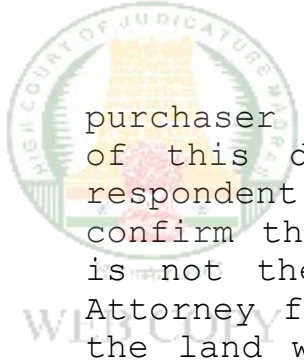
refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the respondents that there was no prejudice caused to the appellant, in the facts and circumstances of this case. The appellant in his affidavit page 309 of the SLP Paper book has set out in a tabular form running into twelve pages as to how he has been prejudiced in regard to his defence on account of the non-supply of the copies of the documents. We do not consider it necessary to burden the record by reproducing the said statement. The respondents have not been able to satisfy us that no prejudice was occasioned to the appellant."

28.As pointed out earlier, the charges are clear, definite and there is no ambiguity and vagueness that was pointed out. The respondent's explanation before the Enquiry Officer and his further explanations to the disciplinary authority would clearly demonstrate that the respondent participated in the enquiry with the full understanding of the charges and hence, this Court is not in agreement with the learned Senior Counsel for the respondent. Hence, we hold that the disciplinary proceedings is not vitiated for not accompanying the statement of allegation along with the charge memo.

Point Nos.2 and 3

29.This is a simple matter which can be decided on the admitted facts though it was projected as one involving several complicated issues of facts and law.

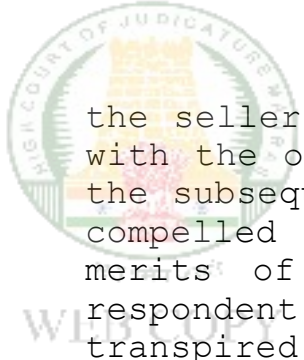
30.The respondent in this appeal is a Government Servant and while he was working as Head Clerk (in the rank of Deputy Tahsildar) in the Office of Revenue Divisional Officer, Madurai, three charges were framed against him on the basis of the documents, namely, the sale agreement dated 24.07.2008 and a Deed of Undertaking dated 16.11.2009. The disciplinary authority came to know about the documents through the complaint of an individual against the respondent. The complaint was not the basis but the two documents that came across propelled the disciplinary authority to initiate disciplinary action. It is not in dispute that the respondent is a signatory to these documents. In the sale agreement, dated 24.07.2008, between the individuals the respondent has signed only as an attestor. However, it is recited in this agreement that the respondent should make necessary effort to give sufficient documents to get patta through Revenue Department at the cost of purchaser and that the purchaser shall ~~be responsible for paying~~ the balance to the respondent within thirty days from getting patta. It is admitted that the respondent has acknowledged the receipt of a sum of Rs.1.92 Crores from the



purchaser on various dates by way of endorsements on the reverse of this document. It is recited in the agreement that the respondent has signed in the agreement as fifth witness only to confirm the responsibility he owes to the purchaser. The seller is not the owner of the land but was holding only a Power of Attorney from the owners. Admittedly, on the date of agreement, the land was registered as part of a Kanmoi (Water body), which could not have been owned by a private party but only by the Government.

31. The respondent himself has produced the order of Commissioner of Survey and Settlement, dated 06.05.2011. The relevant facts stated therein are that the land measuring an extent of 64.05 including the subject matter (land) of sale agreement was taken over by a notification under Tamil Nadu Estate Inam (Abolition and Conversion into Ryotwari) Act (Act XXVI of 1948) on 31.01.1954 and classified as 'Sirudhur Chinna Kanmoi' and no one was granted Ryotwari patta over the said extent of land under the Act. Though the Assistant Settlement Officer granted Ryotwari patta in the year 1996 in favour of one individual, the same had been cancelled by the Director of Survey and Settlement. It is at that stage, the deed of undertaking dated 16.11.2009 was executed by the respondent / writ petitioner on 16.11.2009 in favour of the purchaser. The respondent described himself as the Revenue Inspector of Madurai South Taluk in the said document. This document is an undertaking / agreement and in this document, the respondent acknowledges the receipt of a sum of Rs.60,00,000/- (Sixty lakhs) on his assurance earlier to get patta from the Revenue Department. Further, in the same document, receipt of a further sum of Rs. 10,00,000/- (Ten lakhs) was acknowledged by the respondent stating that he had incurred additional expenditure for getting patta on account of the necessity to approach Commissioner of Land Administration and Director of Survey and Settlement for getting patta. The respondent by this document promised the purchaser to pay back a sum of Rs.1,40,00,000/- (Rupees One Crore Forty Lakhs) in case, the respondent is not able to get pata for the land within sixty days. The respondent / writ petitioner admits his signature in the two documents which are the basis for framing charges.

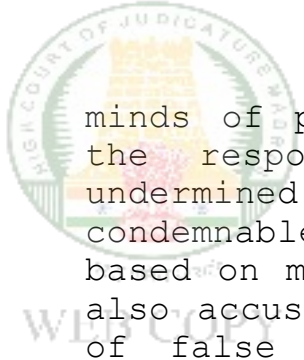
32. The respondent was serving in the Revenue Department as Revenue Inspector and his official position has been utilised for prompting the purchaser to believe his words to be capable of getting patta for a property which was classified as a water body in revenue records for several decades. Receipt of a fabulous sum of Rs.70,00,000/- (Rupees Seventy Lakhs) for the purpose of getting patta for certain extent of land by a responsible servant of Government in Revenue Department is nothing but misconduct. The big sum required by respondent further speaks about the purpose which he indicated to the purchaser. It can be only to influence the revenue officials at various levels, the respondent wanted the money from the purchaser. The original owners are not the contracting parties. The respondent admits that his friend,



the seller is only a Power of Attorney holder having an agreement with the original owners to purchase the property. It was due to the subsequent misunderstanding or falling faith the purchaser was compelled to give a complaint. We are not concerned about the merits of the allegations made by the purchaser against the respondent. On the admitted facts and the nature of transaction transpired from the two documents, we have no other option but to conclude that the respondent had directly involved in a commercial transaction involving land taken over by the State under the Inam Abolition Act. The receipt of Rs.70,00,000/- (Rupees Seventy Lakhs) for getting patta is certainly for changing the notations and classifications of the land in respect of which the sale agreement was signed on his assurance. The respondent was the Revenue Inspector. He undertakes to get patta for a land which is a Government property as per Revenue Records for several decades.

33. Under the provisions of Tamil Nadu Estate Inam (Abolition and Conversion into Ryotwari Act, 1948, patta cannot be granted in respect of land which are classified as Tank. Even in respect of private tank, patta cannot be issued. In any event, we are of the view that the respondent's roll is very important to get through the commercial transaction. Hence, he is involved directly in the commercial transaction. A Revenue Officer gets himself interested in getting patta for a land which is registered as Government property by the two documents compels us to hold that the conduct of respondent is nothing but conduct unbecoming of a Government Servant. Receiving such a huge sum of Rs.70,00,000/- (Rupees Seventy lakhs) to get patta speaks something special about the roll he undertook to play. The Hon'ble Supreme Court, in the case of **Flaxo Laboratories (P) Ltd vs Presiding Officer, Labour Court, Meerut**, reported in **AIR 1984 SC 505** has observed that acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty.

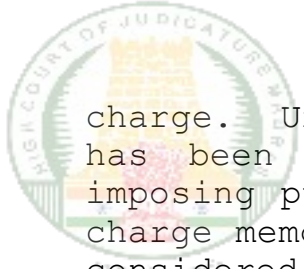
34. It is in the above background, we fail to understand as to how the Enquiry Officer ignored the crucial document. Even without referring to the document, namely, the deed of undertaking, dated 16.11.2009, the Enquiry Officer found the respondent guilty of all the three charges. We need not elaborate the findings of Enquiry Officer at this stage as the disciplinary authority has considered the relevant facts, the documents and the explanation offered by the respondent to the charges at different stages elaborately. Based on the facts which are not seriously disputed even before us, the disciplinary authority has come to a definite conclusion that charges against the respondent are proved. The disciplinary authority has held that the respondent is guilty of serious misconduct by involving himself in a transaction and that the conduct of respondent spoiled the decorum and dignity and integrity of the official machinery, apart from bringing bad name to the District Administration in the



minds of public. The disciplinary authority further found that the respondent had compromised the official propriety and undermined the standards of official behavior which are highly condemnable. Apart from the allegation found in the charges, based on materials and facts recorded, the disciplinary authority also accused the respondent for breach of trust and for creation of false records. The disciplinary authority described the conduct of respondent as one which amounts to fraud and forgery. The appellate authority and the reversional authority, namely, the Government have confirmed the order of disciplinary authority.

35. The case of the respondent is that the disciplinary authority has punished the respondent for allegations and reasons which are not found in the charge memo and that the findings of disciplinary authority are based on no evidence. As pointed out in our discussion, the charges are proved from mere reading of the contents of the two documents.

36. As per Section 92 of the Indian Evidence Act, when the terms of the contract has been proved by production of the documents, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument. The purchaser has been examined in this case. The evidence of the respondent and other witnesses examined by him on his behalf are quite contrary to the terms of the two documents relied upon by the disciplinary authority. Section 92 of the Indian Evidence Act is based on the principles that were followed and applied by Courts even before the statute. In such circumstances, accepting the case of the respondent quite contrary to the two documents, admittedly executed by him, will be against law. Even otherwise the respondent has not made an attempt to explain the terms of the documents to support his stand that he was not involved in the transaction which is purely commercial. Indian Evidence Act need not be followed in all cases in the strict interpretation of its provisions by Court while applying the provisions relating to departmental proceedings. However, this Court is convinced that the disciplinary authority has rightly relied upon the terms of the two documents for the purpose of holding that the respondent was engaged himself in a commercial transaction and undertook to do something in furtherance of the contract for a consideration. Hence, the contention of the respondent that he was not involved in any sale or money transaction in connection with the sale of property cannot be believed. In this case, as pointed out earlier, the disciplinary authority has considered and has extracted the charges, explanations of the respondent, findings of the Enquiry Officer and the further explanations submitted by the respondent to the enquiry report. The disciplinary authority has extracted the charges, explanations, enquiry report and the further explanation. Thus, the disciplinary authority has proceeded to call out the facts which are admitted and revealed from the two documents. It is only thereafter the disciplinary authority has drawn its conclusions based on the findings of every



charge. Unfortunately, the findings of the disciplinary authority has been construed by the learned Single Judge as an order imposing punishment on the allegations which are not there in the charge memo. However, the order of disciplinary authority is well considered order and the disciplinary authority has rendered findings on each charge to show that the charge against the respondent on each count is proved beyond doubt. The respondent himself in his typed set produced the order passed by the Director of Survey and Settlement dated 06.05.2011. This order would clearly show that the land, which is the subject matter of the sale agreement was taken over by the Government by notification dated 31.01.1954 under the provisions of the Tamil Nadu State Estate Inam (Abolition and Conversion into Ryotwari), Act, 1948. It is also seen that the land was not classified as a ryotwari land during settlement but the land was identified as a part of Survey No.174/1 having an extent of 64.05 acres and classified as 'Sirudhur Chinna Kanmoi'. However, it is relevant to point out that no ryotwari patta was given to any one during settlement. There was not even a claim by any individual for grant of ryotwari patta. However, the Assistant Settlement Officer appears to have carved out an extent of 3 acres and plot it under Survey No.33/1 and granted ryotwari patta long after settlement. The Assistant Settlement Officer has no right to grant patta after finalisation of settlement several decades back. Hence, the order of Assistant Settlement Officer was rightly set aside by initiating *suo motu* proceedings to cancel the order. The file was transferred to Director of Survey and Settlement and the order of Assistant Settlement Officer dated 23.02.1996 was set aside. It was thereafter a Writ Petition came to be filed wherein the order of Director of Survey and Settlement was set aside and remitted to the Director of Survey and Settlement on technical grounds. It is thereafter the previous order of Director of Survey and Settlement was confirmed. However, a further direction was issued to effect changes in the revenue records by granting ryotwari patta in favour of an individual, in accordance with the registration of land prior to settlement. This order is the subject matter of another litigation. Hence, we are not concerned about the merits of the order. However, it is pertinent to mention that the further direction in the order of Director of Survey and Settlement dated 06.05.2011 is on the basis of the report submitted by his subordinates. Strangely, the claim of the individual for ryotwari patta, was not on the basis of any document of title or by order of Court. It is also pertinent to mention that the original owner himself has admitted the classification of the land as it existed as Government property from the year 1954. The fact that no one interested in the land, approached the settlement authorities for ryotwari patta for several decades would only suggest that the only document namely the sale deed of the year 1937 relied upon by the so-called owner of the property cannot be accepted as a genuine document without further investigation of the facts as to the identity of the



property and other revenue records corresponding to the property which is the subject matter of sale agreement.

37. In such circumstances, this Court is inclined to accept the findings of the disciplinary authority as regards the character of the land and the classification of the land as per the revenue records.

38. Once the character of the property is admitted as a property of Government, the second and third charges get proved in view of the fact that the respondent himself undertook to get patta over such Government property. The respondent being a responsible revenue official received a fabulous sum of Rs.70 lakhs for the said purpose.

39. In the above circumstances, this Court is of the firm opinion that the order of disciplinary authority does not suffer from any infirmity and the charges against the respondents are rightly held to be proved on the basis of the material documents on record which are admittedly signed by the respondents. Hence, this Court is not in a position to accept the contention of the respondent / writ petitioner that he was punished for allegations and reasons which are not found in the charge memo. Three charges framed against the respondent are specific and they were held to be proved beyond doubt based on materials and facts which are not in dispute. The learned Senior Counsel has made a serious attempt to construe the findings on the charges as charges themselves and try to substantiate his case that the punishment is inflicted on the basis of new charges which are not set out in the charge memo. The punishment in this case is only for the charges that were proved against the respondent. Without the findings on the factual issues, it is not possible to draw the conclusions. In the present case, the findings on the charges are the basis upon which the conclusions are drawn by the disciplinary authority. We do not find any legal infirmity in the order of disciplinary authority punishing the respondent by dismissing from service, by treating it to have contained any new charges.

40. The learned Senior Counsel relied upon a judgment of Hon'ble Supreme Court in **Union of India v. H.C. Goel** reported in **AIR 1964 SC 364 (V 51 C 46)** wherein it has been held as follows:

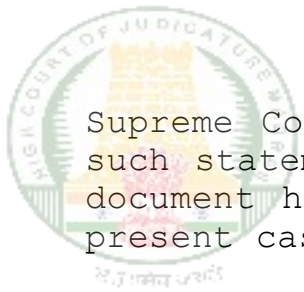
"In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311 (2), the High Court under Art. 226 has Jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the



charge framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence."

41. The learned Senior Counsel relied upon a judgment of Hon'ble Supreme Court in the case of **Calcutta Dock Labour Board and others v. Jaffar Imam and others** connected civil appeals reported in **AIR 1966 SC 282 (V 53 C 58)**. The respondents in the respective Civil Appeals before Hon'ble Supreme Court were Dock workers attached to the port of Calcutta and on 12.08.1955, they were detained under the Preventive Detention Act, 1950, (Act No.4 of 1950) and the order of detention was also confirmed by the State Government under Section 11 of the Act on the representation of the respondents. After the respondents were released from detention, the appellant before Supreme Court commenced disciplinary proceedings against respondents by issuing show cause notice to terminate the services of respondents in terms of clause 36(2) (d) of Calcutta Dock Workers (Regulation of Employment) Scheme, 1951. The appellant, not satisfied with the explanations of respondents, terminated the services of respondents. The order of termination was also confirmed by the State in Appeal. The appellant before Hon'ble Supreme Court and the State have taken the view that orders of detention passed against respondents amounted to orders of conviction and that the appellant was justified in terminating the services of respondents / workmen. After taking note of the position that the scope of entertaining writ petition by Supreme Court or High Court challenging order of detention is very limited, the Hon'ble Supreme Court observed that the opinion expressed by the Advisory Board cannot be equated to an order of conviction of a criminal Court and the order of termination based only upon the detention orders and not on the basis of any independent enquiry is a conclusion based on suspicion and hence, bad. This judgment in our view is not applicable to this case.

42. Learned Senior Counsel for respondent then relied upon the judgment of Hon'ble Supreme Court in **Sait Tarajee Khimchand and others v. Yelamarti Satyam alias Sattayya and others** reported in **(1972) 4 SCC 562**, wherein the Hon'ble Supreme Court has observed that mere marking of an exhibit does not dispense with the proof of documents. This observation is with reference to day book and the ledger marked by plaintiff without examining any one to prove that they were prepared in the course of business. With reference to a statement contained in a letter the same was not even shown to the defendants in cross-examination even though the statement was by a different firm. In that context, the Hon'ble



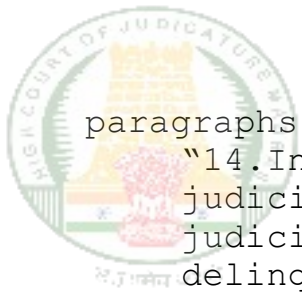
Supreme Court refused to accept the statement on the ground that such statement has to be proved as a fact and the contents of the document have to be proved. This judgment has no bearing in the present case.

43. Learned Senior Counsel for respondent further relied upon the judgment of Hon'ble Supreme Court in the case of **Zunjarrao Bhikaji Nagarkar v. Union of India and others** reported in (1999) 7 SCC 409, wherein the Hon'ble Supreme Court has held that initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite and that there must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer as mere suspicion has no role to play in such matter. In this judgment, the Hon'ble Supreme Court, has held that the disciplinary proceeding, initiated against the Commissioner of Central Excise for not imposing penalty on the assessee under Rule 173-Q of the Central Excise Rules, 1944, when he passed an order holding that the assessee had clandestinely manufactured and cleared the exercisable goods wilfully and evaded excise duty warranting confiscation of goods. Paragraph 43 of the judgment reads as follows:

"43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law; e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

This judgment may not have any relevance to the case on hand.

44. The learned Senior Counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court in the case of **Roop Singh Negi v. Punjab National Bank and others** reported in (2009) 2 SCC 570 wherein the Hon'ble Supreme Court has observed in



paragraphs 14 and 23 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.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

45. The Hon'ble Supreme Court in the above judgment referred to several precedents wherein the following propositions were canvassed in different factual contents:

"(a) If a charge is held to be proved based on no evidence, the order of disciplinary authority is bad;

(b) Although the provisions of Evidence Act are not applicable in departmental proceedings, the principles of natural justice are required to be complied with;

(c) Inference of facts must be based on evidence which meet the requirements of legal principles;



(d) The Enquiry Officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charge is wholly illegal;

(e) Suspicion or presumption cannot take the place of proof even in a domestic enquiry;

(f) The Court should determine the distinction between some evidence or no evidence and the question required to be posed and necessary as to whether the evidence adduced would lead to the conclusion as regards the guilt of a delinquent officer or not. In other words, the evidence adduced on behalf of the management must have nexus with the charges and the Enquiry Officer cannot pose his findings on mere hypothesis. Mere ipso dixit adduced on his part cannot be a substitute of evidence.

(g) Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures."

None of the above enumerated principles is relevant in the present case having regard to the facts.

46. The learned Senior Counsel for the respondent relied upon a judgment of the Hon'ble Supreme Court in the case of **Rangammal v. Kuppuswami and another** reported in **2011-3- L.W.48** wherein the Hon'ble Supreme Court deals with the burden of proof and held that the burden of proving the fact always lies upon the person who asserts and that until such burden is discharged, the other party is not required to be called upon to prove his case. This judgment has no application to the facts of this case and it is the respondent who has pleaded the case in variance with the terms of written documents signed by him.

47. In **State of Assam v. Mohan Chandra Kalita and another** reported in **AIR 1972 SC 2535 (V 59 C 492)**, the Hon'ble Supreme Court, on the facts of the case held that enquiry into extraneous allegations with which the employee was not charged must have



certainly prejudiced the Enquiry Officer against the employee and that there should be evidence to sustain the charge.

48. In **Sawai Singh v. State of Rajasthan** reported in (1986) 3 SCC 454, the Hon'ble Supreme Court has held as follows:

"16. It has been observed by this Court in *Surath Chandra Chandra Chakrabarty v State of West Bengal* [1971] 3 S.C.R. 1 that charges involving consequences of termination of service must be specific, though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of *State of Andhra Pradesh v S. Sree Rama Rao* [1964] 3 S.C.R. 25 and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But a departmental enquiry entailing consequences like loss of job which now-a-days means loss of livelihood, there must be fair play in action, in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural Justice in so far as these are applicable in a particular situation."

49. In **M.V. Billani v. Union of India and others** reported in (2006) 5 SCC 88, the Hon'ble Supreme Court after holding that the charges were vague held that removal of Government servant on the basis of enquiry report where the evidences recorded and inferences drawn were not commensurate with the charges, is bad. Paragraphs 14, 15, 23 and 25 of this judgment are relevant.

"14. From a perusal of the Enquiry Report, it appears to us that the disciplinary authorities proceeded on a wrong premise. The Appellant was principally charged for non-maintenance of ACE-8 Register. He was not charged for theft or misappropriation of 4000 kgs. of telegraph copper wire or misutilization thereof. If he was to be proceeded against for misutilisation or misappropriation of the said amount of copper wire, it was necessary for the disciplinary authority to frame appropriate charges in that behalf. Charges were said to have been framed after receipt of a report from CBI (Anti Corruption Bureau). It was, therefore, expected that definite charges of misutilization/misappropriation of copper wire by the Appellant would have been framed. The Appellant, therefore, should have been charged for defalcation or misutilisation of the stores he had handled if he was to be departmentally proceeded against on that basis. The second charge shows that he had merely failed to supervise the working of the line. There was no charge that he had failed to account for the copper wire over which he had physical control."



15. It will bear repetition to state that the charges which were framed related to only non-maintenance of ACE-8 Register and non-supervision of working of the line. In absence of any charge that he had in fact misappropriated copper wire for his own benefit out of the disposal thereof; the question as regard purported misconduct by way of misutilisation of 4000 kg. of copper wire could not have been gone into. Furthermore, it has not been shown that ACE-8 register was required to be maintained in an appropriate form or in a particular manner i.e. in bound form or in loose sheets.

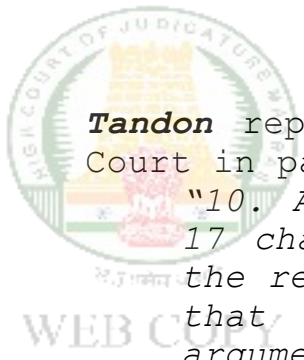
23. Evidently, the evidences recorded by the Enquiry Officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the Appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire.

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

None of the Judgments relied upon by the learned Senior Counsel appearing for the respondent and referred to above are applicable to the case on hand.

Point No.4

<https://hcservices.ecourts.gov.in/hcservices/> The learned Senior Counsel for the respondent then relied upon the judgment of the Hon'ble Supreme Court in the case of **Bilaspur Raipur Kshetriya Gramin Bank and another v. Madanlal**



Tandon reported in **2015 (2) CWC 317** wherein the Hon'ble Supreme Court in paragraph No.10 of the judgment has held as follows:

"10. Admittedly, show cause notice was served along with 17 charges, but all the documents were not supplied to the respondent. A perusal of the impugned order will show that when the Division Bench, during the course of arguments, asked the learned counsel appearing for the appellants whether documents viz. P-21, P-25, P-23, P-19, P-30, P-31 & P-32 were supplied to the respondent, on the basis of which various charges have been held to be proved, learned counsel was not able to demonstrate that the above documents were supplied to the respondent even during the course of inquiry. The Division Bench then following a catena of decisions of this Court came to the conclusion that the order of punishment cannot be sustained in law. However, taking into consideration the fact that the respondent was out of employment since 1991, a lump sum payment of Rs.5,00,000/- towards the salary would meet the ends of justice."

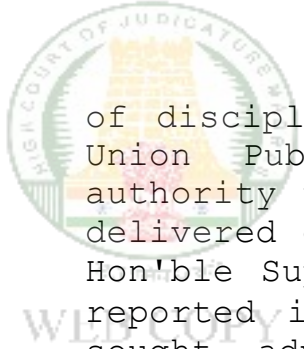
51. However, in the present case, it is not the compliant that the respondent was not furnished with a copy of material or documents that was relied upon by the disciplinary authority. The argument advanced by the learned counsel for the respondent is that non-communication of report of Tamil Nadu Public Service Commission to the respondent would vitiate the order of revisional authority namely the Government.

52. The learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court in the case of **S.N.Narula v. Union of India and others** reported in **(2011) 4 SCC 591** wherein the Hon'ble Supreme Court has held as follows:

"6. We heard the learned counsel for the appellant and the learned counsel for the respondent. It is submitted by the counsel for the appellant that the report of the Union Public Service Commission was not communicated to the appellant before the final order was passed. Therefore, the appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed.

7. We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the order."

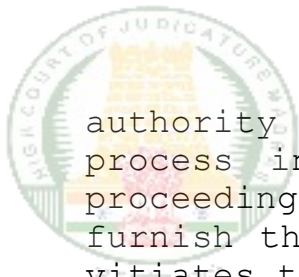
53. The Hon'ble Supreme Court in the above case noticed that the opinion of the Union Public Service Commission was not communicated to the appellant before he was heard by the disciplinary authority. Since the opinion of the Union Public Service Commission was communicated to the appellant along with the final order passed by the disciplinary authority and the order



of disciplinary authority was by accepting the recommendation of Union Public Service Commission the order of disciplinary authority was held to be bad. The judgment of Supreme Court was delivered on 30.01.2004. This judgment was not considered by the Hon'ble Supreme Court in the case of **Union of India v. T.V.Patel** reported in **(2007) 4 SCC 785** where the disciplinary authority sought advice of UPSC before imposition of penalty on the delinquent and it was held that it is not necessary for the disciplinary authority to make available a copy of the advice tendered by UPSC to the delinquent officer and that consultation with UPSC is not mandatory. It is further held that the provisions of Article 320(3)(c) of the Constitution of India are not mandatory and that they do not confer any rights on the public servant so that the absence of consultation or any irregularity in consultation process or failure in furnishing a copy of the advice tendered by UPSC if any does not afford the delinquent government servants a cause of action in a Court of law. The judgment of the Hon'ble Supreme Court in **T.V.Patel's** case was held per incuriam and distinguished in a subsequent judgment of the Hon'ble Supreme Court in the case of **Union of India v. S.K.Kapoor** reported **(2011) 4 SCC 589**. In this judgment, it is held that if the authorities do not consult the Public Service Commission or rely upon the report of the Commission for taking disciplinary action, it is not necessary to furnish a copy of the report of Commission.

54.The learned Counsel for the respondent submitted that since the judgment of the Hon'ble Supreme Court in **T.V.Patel's** case was declared as *per incuriam* by the Hon'ble Supreme Court in the case of **Union of India v. R.P.Singh** reported in **(2014) 7 SCC 340**, the order of revisional authority relying upon the opinion of TNPSC but without furnishing a copy of the opinion is bad. Even in the said judgment, the Hon'ble Supreme Court in paragraph 12 has held that the decision in S.N.Narula's case is an authority for the proposition that the advice of UPSC, if sought and accepted, the same, regard being had to the principles of natural justice, is to be communicated to the delinquent before imposition of punishment. Hence, only if the opinion of Commission is sought and accepted, the requirement of communicating the same to the delinquent before imposition of punishment can be imported. In the present case, the disciplinary authority did not pass the order after getting opinion of TNPSC.

55.The learned Additional Government Pleader submitted that it is not mandatory to have consultation with the Tamil Nadu Public Service Commission in all the matters relating to disciplinary action. It is further submitted that the disciplinary authority has independently decided the case on merits and imposed the punishment of dismissal. It was only the Government, the revisional authority who sought for opinion of TNPSC and that will not vitiate the findings of the disciplinary



authority to sustain the punishment imposed. The consultative process in this case is only regarding the regularity of the proceedings of disciplinary authority and hence, the failure to furnish the copy of opinion by the revisional authority would not vitiate the order of disciplinary authority.

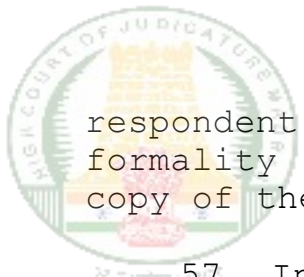
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56.If the consultation is by the disciplinary authority as to the quantum of punishment or the disciplinary authority imposed the punishment based on the recommendations or opinion of the Tamil Nadu Public Service Commission, then further opportunity is required to be given to the delinquent in compliance of principles of natural justice. The requirement of furnishing a copy of the recommendation of Public Service Commission is held to be mandatory only in cases where the disciplinary authority accept the recommendation or opinion of Public Service Commission and impose a punishment only on the basis of such recommendation. Hence, in this case, for examining the issue whether the order of disciplinary authority is legally sustainable or not, this issue does not arise for consideration. The order of revisional authority cannot also be challenged on the ground of violation of principles of natural justice merely because the report of Tamil Nadu Public Service Commission was not furnished to the respondent for the following reasons:

(a) The opinion of the Tamil Nadu Public Service Commission in this case was only regarding the legality of the proceedings of the disciplinary authority and justifiability of the punishment given to the respondent by the disciplinary authority.

(b) In this case, the Tamil Nadu Public Service Commission has given its opinion only on the basis of the findings recorded by the disciplinary authority and the opinion of the Tamil Nadu Public Service Commission is not on the basis of any new material or for any special reason.

(c) The purpose of getting opinion from Tamil Nadu Public Service Commission was only to ensure the regularity of the proceedings of disciplinary authority and the proportionality of the punishment. If any flaw or omission was pointed out to the Government for rectification, the Government would have passed appropriate orders either accepting or overlooking the views of the Commission. In this present case, the opinion given by the Tamil Nadu Public Service Commission cannot be treated as an adverse material so as to give a further opportunity to the respondent by the revisional authority. If the Government issued orders in deviation of the Commission's views it is necessary to give an opportunity to the respondent. Similarly if the opinion of the Tamil Nadu Public Service Commission is based on any new material and the opinion is also referred to by the revisional authority then also an opportunity need to be given to the

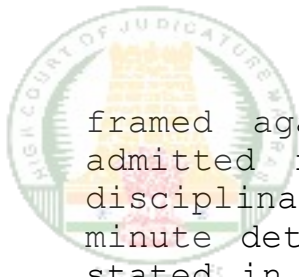


respondent. However, in the present case, it will be an empty formality if the revisional authority is required to furnish the copy of the opinion of the Tamil Nadu Public Service Commission.

57. In this case, we have already held that the findings of the disciplinary authority on the charges framed against the respondent are unassailable. The learned counsel focussed his attention attacking the order of disciplinary authority. We have expressively dealt with the case on factual issues and expressed our view concurring with the disciplinary authority. In such circumstances, this Court is not inclined to remit the matter either to the revisional authority or to the disciplinary authority on the ground that the revisional authority has not given a copy of the opinion given by the Tamil Nadu Public Service Commission before an order is passed. Since there was no other material relied upon by the Tamil Nadu Public Service Commission while offering its opinion / recommendations, it will be against public policy to decide this case on this technicality and prolong this litigation further. This Court on an over all analysis of the entire facts as borne out from records, is of the firm opinion that the respondent is guilty of charges and that the charges are very serious. The findings are based on the materials on record and supported by reasons. The conduct of the respondent was already in conflict with the interest of the State. As pointed out earlier, the respondent got himself engaged, involved in a transaction in respect of the property of Government. Such a serious this conduct can never be allowed in the interest of State administration. There is an element of public interest public trust which need to be protected leave alone the other technicalities involved. We are of the opinion that the misconduct alleged and proved against the respondent is very grave and serious in nature. This Court is not inclined to set a precedent to permit similar incident to recur in future. In the above circumstances, we answer point 4 also in favour of the appellant, namely the State.

Point No.5:

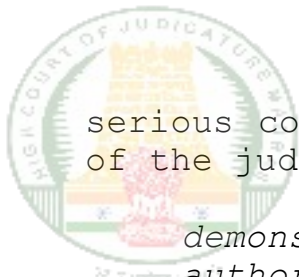
58. We have already held that the order of disciplinary authority punishing the respondent is based on the findings supported by reasons and material and that the order of disciplinary authority is not vitiated. We have also rejected the contention of the learned Senior Counsel for the the respondent that the disciplinary authority has punished the respondent for allegations and reasons which are not found in the charge memo. We have also held that the order of disciplinary authority and revisional authority are not vitiated for the failure to furnish a copy of the opinion / recommendation of the Tamil Nadu Public Service Commission to the respondent. The learned Single Judge, however, has held that the disciplinary authority, had gone beyond the scope of all the three charges and added new charges, in the order of dismissal dated 18.06.2013. The findings on the charges



framed against the respondents are rendered on the basis of admitted facts and the materials placed on record before the disciplinary authority with reference to each charge. Every minute details or particulars relating to the charge need not be stated in the charge memo. It is only on the basis of evidence adduced and material produced, the findings are arrived at. In this case, the finding on facts are recorded by the disciplinary authority in its order on the basis of admissions and materials placed on record. In such circumstances, the findings cannot be challenged on the ground that they are not found place in the charge memo which was originally framed against the respondent. The findings rendered by the disciplinary authority are only to ascertain whether the respondent is guilty of the three charges framed against him. In such circumstances, the order of the learned Single Judge holding that the disciplinary authority had gone beyond the scope and that new charges had been added by the disciplinary authority, cannot be sustained. The factual discussions and the findings on each charge cannot be treated as additional charge as the finding on the issue is always based on set of facts, which may not found place in the charge memo. Holding that findings on every charge should not be beyond the allegations found in the charge memo will lead only to undesired result in every case. The findings of the disciplinary authority in this case were mainly on the basis of admitted facts and the recitals in the two documents signed by the respondent. The conclusions of the learned Single Judge to treat the findings as new charges is contrary to the well settled principles. Hence, we are unable to subscribe to the view expressed by the learned Single Judge while allowing the Writ Petition. The other point on which the learned Single Judge held in favour of the respondent is that the order of revisional authority without furnishing the copy of the opinion received from the Tamil Nadu Public Service Commission is bad. We have already discussed this issue and held that the order of revisional authority is not required to be set aside on the ground of violation of principles of natural justice. Having regard to the object behind the consultation process and the respondent in the present case is keen in attacking the findings of disciplinary authority, this Court is of the firm view that the impugned order of disciplinary authority as confirmed by the appellate authority and revisional cannot be set aside on the ground of violation of principles of natural justice.

59. The learned Senior Counsel appearing for the respondent further submitted that the order of appellate authority as well as the revisional authority without assinging reasons and without considering the points raised by the respondent would vitiate the orders. The learned Senior Counsel appear for the respondent relied upon the judgment of the Hon'ble Supreme Court in the case of **Narinder Mohan Arya v. United India Insurance Co.**

Ltd. and others reported in (2006) 4 SCC 713, wherein the Hon'ble Supreme Court held that the order of appellate authority must contain reasons, where rules require application of mind on



serious contention raised before appellate authority. Paragraph 36 of the judgment is relevant and extracted as follows:

"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."

60. The learned Senior Counsel appearing for the respondent therein relied upon a judgment of the Hon'ble Supreme Court in the case of **Director (Marketing), Indian Oil Corporation Ltd., and another v. Santosh Kumar** reported in **2006 (11) SCC 147** wherein it has been held as follows:

"A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set-aside the order passed by the Disciplinary Authority and the Appellate Authority and remit the matter for fresh disposal to the Disciplinary Authority. The Disciplinary Authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh on merits."

61. In the judgment before the Hon'ble Supreme Court, it has been found that the order of punishment by the disciplinary authority and the order of the appellate authority are cryptic and non-speaking orders and that therefore, the orders passed by the disciplinary authority and the appellate authority were set aside on the ground of non-application of mind. Further the submission of the learned counsel for the respondent relying upon this judgment that the order of disciplinary authority should be set aside and that the matter should be remitted once again to the disciplinary authority cannot be justified.

62. The learned Senior Counsel for the respondent also relied upon a judgment of the Hon'ble Supreme Court in the case of **Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, Chennai - 600 002 and another v. K.P. Sugumar** reported in



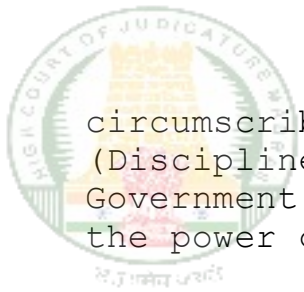
(2013) 8 MLJ 641 wherein the Hon'ble Supreme Court has held as follows:

"13. In the appeal preferred by the respondent, the appellate authority also did not examine the facts and materials on record. When the appeal has been preferred, the appellate authority has to consider whether the findings of the disciplinary authority are borne out by the evidence on record and whether the punishment imposed is correct. As noticed, while considering the appeal, the appellate authority has to re-appreciate the evidence and come to its own conclusion on facts. But the appellate authority has simply proceeded to confirm the findings of the disciplinary authority and modified the punishment as "compulsory retirement" on humanitarian grounds."

63. It is true that in the said case, the Hon'ble Supreme Court has set aside the order of punishment. However, it was also found by the Hon'ble Supreme Court therein that the order of disciplinary authority is violative of principles of natural justice and that the whole enquiry is also vitiated.

64. In **R. PBhat v. Union of India and others** reported in (1986) 2 SCC 651, the Hon'ble Supreme Court though accepted the proposition that it is not the requirement of Article 311 (2) of the Constitution of India or of the rules of natural justice that in every case the appellate authority should in its order state its own reasons except where the appellate authority disagrees with the findings of the disciplinary authority held that the order of appellate authority in that case was liable to be set aside. The appellate authority failed to give a finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record in terms of Rule 27 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which stipulates that the appellate authority shall consider whether the findings of the disciplinary authority are warranted by the evidence on the record.

65. As pointed out earlier, the learned Senior Counsel appearing for the respondent made his submissions to reiterate his stand that the order of disciplinary authority is illegal and that the matter has to be remitted to the disciplinary authority to pass appropriate order afresh. When we are not able to agree with the submissions of the learned Senior Counsel for the respondent, this Court is inclined to consider all the legal submissions of the learned Senior Counsel to challenge the order of appellate authority and revisional authority on the ground that the order is not supported by reasons and that the order of appellate authority and revisional authority are not with reference to the points put before them. The appeal or revision of course is only the right of person created by a statute. In this case, the provision for filing appeal and revision are



circumscribed by special rules under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Rule 19 confers the right of Government Servant to file appeal. Rule 23 of the Rules prescribe the power of appellate authority and it is extracted as follows:

"23.(1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and pass orders--

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that --

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v)*, (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of Rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit:

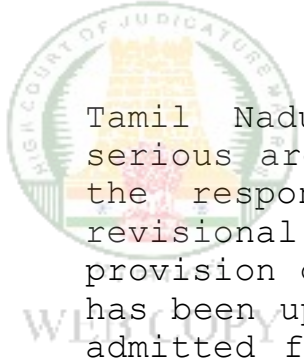
*(Vide G.O.Ms.No.117, P&AR (N) Department, dated 28.09.2011)

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v)*, (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the enquiry, make such orders as it may deem fit; and

*(Vide G.O.Ms.No.117, P&AR (N) Department, dated 28.09.2011)

(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (a) of rule 17 of making representation against such enhanced penalty."

66. Rule 36 also prescribe the power of the Government to revise the order. Having regard to the provisions as contained in



Tamil Nadu Civil Services (Discipline and Appeal) Rules, no serious arguments were advanced by the learned Senior Counsel for the respondent pointing out that the order of appellate or revisional authority is vitiated for non observance of any provision of the Rules. Since the order of disciplinary authority has been upheld by this Court purely on merits and on the basis of admitted facts and the documents executed by the respondents and admitted before the Enquiry Officer remitting the matter to the revisional authority will serve no purpose and it will not be in public interest.

67. For all the above reasons, the Writ Appeal is allowed and the order of learned Single Judge, passed in W.P.(MD) No.8232 of 2015, on 06.10.2015, is set aside and the Writ Petition stands dismissed. No order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1. The State of Tamil Nadu rep. by
The Principal Secretary & Secretary to Government,
Revenue Department,
Secretariat, Chennai - 600 009.
2. The Additional Chief Secretary,
Principal Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.
3. The District Collector,
Collectorate,
Madurai District,
Madurai.

SRM

AE/JC/SAR2/08.08.2017/37P/4C

judgment made in
Writ Appeal (MD) No.1259 of 2015
17.07.2017