

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	Delivered on
16.02.2018	23.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.33469/2013

R.Alexander

Petitioner

vs.

1. The Registrar General
High Court, High Court Buildings
Chennai 600 104.

2. The Government of Tamil Nadu
rep.by its Principal Secretary to
Government, Home [Courts I] Department
Fort St George, Chennai 600 009.

Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to G.O.[D] No.1012, Home [Courts-I] Department, dated 08.12.2012 and to quash the same and direct the respondents to reinstate the petitioner in service as Civil Judge with all attendant benefits, seniority, promotions, increments etc., attached to the post.

For Petitioner : Mr.Ar.L.Sundaresan
Senior Counsel for
Mr.S.D.Venkateswaran

For R1 : Mr.C.T. Mohan

For R2 : Mr.M. Sricharan Rangarajan

ORDER

N.SATHISH KUMAR, J.,

The petitioner has filed the present writ petition challenging the Government Order passed by the 2nd respondent in G.O.[D] No.1012, Home [Courts-I] Department, dated 08.12.2012, with a prayer to quash the same and for a further direction to the respondents to reinstate the petitioner in service as Civil Judge with all attendant benefits, seniority, promotions, increments etc., attached to the post.

2 The brief facts leading to the filing of this writ petition, are as follows:-

[a] The writ petitioner was appointed as Civil Judge [Junior Division / Judicial Magistrate I Class] vide G.O.Ms.No.1517, Home Department dated 16.11.1999. After necessary training, he was posted as District Munsif, Pollachi, on 10.12.1999. Thereafter, he was posted as District Munsif cum Judicial Magistrate at Kattumannarkoil, Cuddalore District for one year. Again he was transferred to Tiruchirappalli as Judicial Magistrate No.5. Subsequently, transferred as Judicial Magistrate No.2, Usilampatti; Principal District Munsif at Kuzhithurai in Kanyakumari District and finally, posted as XV Metropolitan Magistrate, George Town, Chennai and as such, the writ petitioner was continuously working for 13 years till the impugned order of removal from service was served on him on 19.12.2012.

[b] On 02.05.2008, the petitioner was issued with a Charge Memo by the 1st respondent in C.No.40/2004/VC in ROC.No.233/2004 and 298/2004/VC dated 23.04.2008 under Rule 17 [b] of the Tamil Nadu Civil Servants [Discipline and Appeal] Rules. The Article of Charges in the said Memorandum contained six charges. The petitioner has given his written statement of defence only in respect of Charges No.1 and 3 and sought time to peruse the records and to reply in respect of the other charges. However, on 03.11.2008, the petitioner was served with the Proceedings in C.No.40/2004/VC in ROC.No.233/2004 and 298/2004/VC dated 29.10.2008, contemplating enquiry with regard to the charges and appointing the Principal District Judge, Cuddalore, as the Enquiry Officer. The Enquiry Officer examined six witnesses out of nine, cited in the Charge Memo and gave a finding that Charges No.1 and 3 were proved against the petitioner and other charges were not proved. Thereafter, on 15.06.2011, the 1st respondent issued the Official Memorandum dated 30.05.2011 along with the findings of the Enquiry Officer, calling upon the petitioner to show cause as to why punishment of dismissal from service should not be imposed upon him and directed the petitioner to make further representation within

fifteen days. The 1st respondent had chosen to issue the said Memorandum with regard to imposing of punishment on the writ petitioner based on the Enquiry Officer's Report, without affording him an opportunity to give his explanation to the Enquiry Report. The writ petitioner has submitted a detailed representation to the 1st respondent, raising several grounds/points including false and motivated complaint by one Mr.Senthilkumar, irregularities committed in the enquiry proceedings and violation of principles of natural justice. Besides, he has also requested the 1st respondent to reopen the enquiry since the petitioner was not given an opportunity to cross-examine P.W.1 and for adducing defence evidence before the Enquiry Officer.

[c] When the matter stood thus, on 19.12.2012, the petitioner was served with the impugned order / Government Order in G.O.[D] No.1012, Home [Courts-I] Department, dated 08.12.2012, passed by the 2nd respondent, imposing the punishment of removal of the petitioner from service. Challenging the same, the present writ petition came to be filed.

3 The 1st respondent, viz., the Registrar General, has filed a counter affidavit dated 10.10.2014, refuting the allegations of the writ petition and stated that sufficient opportunity was granted to the writ petitioner for adducing the defence witnesses and that the enquiry has been conducted properly and the petitioner has not adduced any evidence. It is the further contention of the 1st respondent that the findings of the Enquiry Officer was placed before the Hon'ble Administrative Committee and on 15.06.2011, the findings of the Enquiry Officer was served to the petitioner and directed him to make his further representation within fifteen days. After receipt of the further representation from the petitioner, the Hon'ble Administrative Committee, on 17.02.2012, resolved not to accept the explanation offered by the writ petitioner and resolved to impose the punishment of removal from service. Thereafter, the Hon'ble Full Court, in the Meeting held on 18.04.2012, approved the Minutes of the Hon'ble Administrative Committee for removing the petitioner from service. The recommendation of the Hon'ble Full Court was sent to the 1st respondent and His Excellency Governor of Tamil Nadu, after independent examination of the case with the connected records, accepted the recommendation of the Hon'ble Full Court and passed the Impugned Order.

4 The 2nd respondent has also filed its counter affidavit dated 20.01.2015 stating that since the High Court is vested with superintending power over the Subordinate Judiciary and the Government has decided to accept the Resolution of the Hon'ble Administrative Committee and Hon'ble Full Court and passed G.O. [D] No.1012 dated 08.12.2012, imposing the

punishment of removal from service of the writ petitioner and on perusal of the relevant records, had passed the impugned order and hence, prayed for dismissal of the writ petition.

5 Mr.Ar.L.Sundaresan, learned Senior Counsel assisted by Mr.S.D.Venkateswaran, learned counsel appearing for the writ petitioner strenuously and vehemently made the following submissions:-

[a] The entire enquiry proceedings has been vitiated as the principles of natural justice has been violated and the writ petitioner has not been given an opportunity to adduce defence witness. Despite the petitioner has made a specific request to furnish copies of certain documents, those documents were not furnished.

[b] The findings of the Enquiry Report has not been given to the petitioner, after completion of the enquiry ; whereas the petitioner was served with the show cause notice as to why he should not be removed from the service.

[c] When the Enquiry Officer is not the Disciplinary Authority, his finding should be furnished to the delinquent officer before the Disciplinary Authority takes any decision. But in the instant case, the Disciplinary Authority has proposed to impose the punishment and sought only a further representation which is nothing but clear violation of principles of natural justice.

[d] Under Rule 17[b] of the Tamil Nadu Civil Servants [Discipline and Appeal] Rules, before passing final orders, the writ petitioner should have been heard ; but no opportunity whatsoever is given to the writ petitioner. It is his further contention that Rule 17[b] is inconsistent with Article 311 of the Constitution of India after amendment. The second show cause notice is not necessary. Whereas, when the Disciplinary Authority even before giving the copies of the findings, has sent the show cause notice for imposition of punishment and that itself is a prejudice and the Hon'ble Administrative Committee has pre-determined the conclusion and after show cause notice, the explanation submitted by the delinquent officer was also not considered properly and the documents sought to be relied upon by the delinquent officer were also not considered. Therefore, serious prejudice is caused to the petitioner and the Government has also simply accepted the findings of the Hon'ble Full Court and as such, there was no application of mind. If the documents have been properly considered before imposition of punishment, the same would have established that the very complaint itself was a motivated one.

[e] The Hon'ble Administrative Committee, before taking any decision on the Enquiry Report, ought to have considered the findings of the Enquiry Officer and the reply given by the writ petitioner, before passing final orders. Whereas, without considering the reply or the further representation of the delinquent officer, the 1st respondent has issued to the Show Cause Notice as to why the proposed punishment of removal should not be imposed on him. Such procedure itself is against the rules and is in violation of principles of natural justice. Further, the documents produced by the delinquent officer/writ petitioner and the written statement were not considered by the Enquiry Officer as well as by the Hon'ble Administrative Committee. There is no materials, remotely available even to suggest that the Hon'ble Administrative Committee had, either considered the representation or the evidence available on record and the Hon'ble Administrative Committee has resolved to impose the punishment of removal mechanically which has been accepted by the Hon'ble Full Court.

[f] It is further contention that the complaint, which is the basis for the initiation of the Disciplinary Proceedings against the delinquent officer/writ petitioner, is highly motivated and the same was pressed into service by a practicing Advocate at Kattumannarkoil who has a serious motive against the delinquent officer, in view of the FIR lodged against the Court Clerk in a "Record Missing" case. Such motivated complaint by the Lawyer has been believed by the Disciplinary Authority and proceedings have been commenced. The complainant, viz., one Senthilkumar, though was examined as P.W.1, he did not withstand the cross-examination and withdrew himself from the cross-examination half way. This aspect has been noted by the Enquiry Officer. Therefore, the entire evidence of P.W.1 should not have been considered by the Enquiry Officer, when P.W.1 was not willing to subject himself for cross-examination.

[g] Similarly, P.Ws.2 to 5 are close friends of P.W.1. Their evidence is also highly doubtful and inconsistent with each other. The Enquiry Officer having found that there are contradictions and variance in their evidence as to the specific allegation of Charges No.1 and 3, the Enquiry Officer merely on the basis of the inference, has come to the conclusion that Charges No.1 and 3 have been proved against the writ petitioner / delinquent officer. The petitioner is not required to prove the negative circumstances. It is only the Department which has brought a specific charge, has to establish the charges. The first charge relates to the alleged improper conduct and association of the petitioner with the advocates staying in a Hotel and the same has not been established and the evidence of the Hotel Manager gives a different version about

the time of arrival. Such evidence cannot be given much credence. Similarly, the evidence of other witnesses with regard to Charge No.3 as to handing over the jewelry to the delinquent officer, is also highly artificial and cannot be believable. When the evidence of the interested witnesses is highly inconsistent and attached with serious artificiality, the charge cannot be inferred on the basis of such evidence.

[h] The High Court, in exercise of power conferred under Article 226 of the Constitution of India, can very well re-appreciate the evidence.

[i] The Hon'ble Administrative Committee should have taken much care and caution, when the lawyer himself is the complainant and had an axe to grind and has a serious motive against the petitioner and it is the duty of this Court to protect the honest Judicial Officer from the unscrupulous litigant as well as the lawyers. It is his further submission that only when the evidence is so overwhelming and beyond all reasonable doubt, the Judicial officer can be inflicted with punishment. When the evidence has not been analysed properly the Hon'ble Administrative Committee and vital contradictions have not been considered, the imposition of the major punishment is against the law.

[j] Learned Senior Counsel submitted that as the Writ remedy is the only option for the writ petitioner challenging the order of removal from service, this Court, while exercising power under Article 226 of the Constitution of India, should assess the evidence and other aspects of the case in its entirety to meet the ends of justice.

[k] Hence, the learned Senior Counsel submitted that the entire disciplinary proceedings is vitiated in view of the violation of the principles of natural justice and the findings of the Enquiry Officer is based on surmise and conjectures and not on any evidence and the impugned order is passed mechanically and hence, prays for setting aside of the impugned order and allowing of this writ petition.

6 In support of his contentions, the learned Senior Counsel placed emphasis on the following Judgments:-

- AIR 1988 SC 1395 [Eswarchand Jain Vs. High Court of Punjab and Haryana] ;
- 1999 [2] SCC 10 [Kuldeep Singh Vs. Commissioner of Police and others] ;
- 1999 [7] SCC 733 [Yoginath.D. Bagde Vs. State of Maharashtra and another] ;
- 2002 [7] SCC 142 [Sherbagadhur Vs. Union of India and

- others] ;
- 2006 [4] SCC 713 [Narender Mohan Arya Vs. United India Insurance Company Limited and Others] ;
 - 2013 [4] SCC 301 [Nirmala.J.Jhala Vs. State of Gujarat and others] ;
 - 2010 -1-LLN-464 [Guj] [S.J.Pathak - Additional Sessions Judge Vs. State of Gujarat] ;
 - 2010 [1] MLJ 977 [Seetharaman Vs. Registrar General, High Court, Madras] ;
 - 1993 [4] SCC 727 [Managing Director, ECIL, Hyderabad and others v. B.Karunakar and others] ; and
 - 2003 CJ [Mad] 2009 [Tirupathi Vs. State of Tamil Nadu represented by the Chief Secretary, Chennai].

7 Countering the arguments, Mr.C.T. Mohan, learned counsel appearing for the 1st respondent would submit that based on the complaint received on 21.04.2004, a discrete enquiry was ordered and the Registrar [Vigilance] gave a report on 13.09.2005. After the issuance of the Show Cause Notice, explanation was sought for from the writ petitioner and thereafter, as per the Resolution of the Hon'ble Administrative Committee, the proceedings were issued on 23.04.2008 and the writ petitioner gave his explanation and after following due procedure, it was resolved to frame six charges against the writ petitioner and the Principal District Judge, Cuddalore, was appointed as the Enquiry Officer and he conducted enquiry against the writ petitioner and out of six charges, Charges No.1 and 3 were proved against him. Though P.W.1 was the complainant, he gave the evidence and while cross-examination, due to some questions posed to him, he withdrew himself from the cross-examination and he did not cooperate with the enquiry. The Enquiry Officer has taken note of the conduct of P.W.1 and in fact, has not relied upon his evidence. P.Ws.2 to 5 are the independent witnesses. They have clearly spoken about Charges No.1 and 3. The conduct of P.W.1 withdrawing himself from the enquiry proceedings shows that in fact, he has been won over by the delinquent officer only in order to support the delinquent officer and P.W.1 has not supported his version before the Enquiry Officer. Therefore, the contention of the learned Senior Counsel appearing for the writ petitioner that P.Ws.2 to 5 are henchmen of P.W.1, has no basis. Also, P.W.4 has given evidence only to support the delinquent. Therefore, the Enquiry Officer has considered the above aspect and come to the right conclusion. It is the contention of the learned counsel appearing for the 1st respondent that strict rule of evidence is not applicable in domestic enquiry and only preponderance of probabilities are the basis for arriving at the conclusion. P.Ws.2 to 5 have clearly spoken about Charge No.3. The allegation of the writ petitioner that

he has not been given an opportunity, is also not correct and in fact, even while serving the charge papers annexed with questionnaires, the petitioner did not show any intention to examine any of the defence witnesses. Even in the further explanation submitted by him, he has not sought any permission for examination of witnesses on defence side. Therefore, it cannot be said that there was no opportunity given at all to the petitioner. When the examination of the Departmental side witnesses is over, it is the delinquent officer, who ought to have sought permission of the Enquiry Officer to adduce any evidence on his side. The fact remains that he has not even disclosed the list of witnesses proposed to be examined on his side. Therefore, it cannot be stated that there was no opportunity whatsoever given to the writ petitioner. It is the further contention of the learned counsel for the 1st respondent that the contention of the delinquent officer that with regard to Charge No.1, he has submitted TA Bill to prove the fact that he has travelled only in a bus and that the said TA Bill has not been properly considered, is only an after-thought. In fact, the petitioner did not whisper anything about the TA Bill in his explanation. Therefore, such contention cannot be given much importance and proper and due procedure has been followed while seeking further explanation, after obtaining the findings of the Enquiry Officer. Hence, it is submitted that there is no procedural lapse or violation and there was no violation of principles of natural justice in the instant case and further, strict rule of evidence cannot be applied in disciplinary proceedings and the High Court cannot re-appreciate the evidence. It is submitted that when the findings are given and explanation was sought for from the delinquent officer, he has only sought time to file certain documents. Even in the representation dated 26.08.2011, he has not offered any explanation as to the findings and no prejudice whatsoever is shown. Even in the affidavit, it is not averred as to the nature of prejudice caused to him. Therefore, it is the contention of the learned counsel for 1st respondent that only at the argument stage, the alleged prejudice came to be raised, in the absence of pleadings and also in his reply. The Hon'ble Administrative Committee as well as the Hon'ble Full Court, with their collective wisdom, has approved the findings and resolved to impose the major punishment and the decision of the Hon'ble Full Court, cannot be interfered with merely on the ground of violation of principles of natural justice. Hence, he prayed for dismissal of the writ petition.

8 Learned counsel for the 1st respondent, in support of his contentions, has placed reliance on the following judgments:-

- 1977 [2] SCC 491 [State of Haryana and another v. Rattan

Singh];

- AIR 1977 SCC 2286 [High Court of Judicature at Bombay through its Registrar v. Udaysingh];
- AIR 1982 SC 673 [J.D. Jain v. The Management of State Bank of India and another];
- 2006 [2] LLN 353 [Union of India v. Central Administrative Tribunal];
- 2018 [1] CTC 382 [S. Umamaheswari v. The High Court of Judicature at Madras];
- LAWS(SC)-2014 - 11 - 52 [Union of India v. P.Gunasekaran];
- AIR 1966 SC 1827 [State of Maharashtra v. A.R. Srinivasan]; and
- AIR 1988 SC 2592 [Director General , Indian Council of Medical Research and others v. Dr.Anil Kumar Ghosh and another].

9 Mr.M. Sricharan Rangarajan, learned counsel appearing for the 2nd respondent would contend that the impugned order has passed on independent consideration. He would submit that according to Article 234 of the Constitution of India, the Governor is the appointing authority for the persons other than District Judges in the judicial service and according to Article 235 of the Constitution of India, the power to have control over the subordinate judiciary has been vested with the High Court specially with a view to protect the independence of the subordinate judiciary and as per Rule 18 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the Government examined the case with all connected records and decided to accept the resolution of the Hon'ble Administrative Committee and the Hon'ble Full Court and issued order. Being the Disciplinary Authority, the High Court has completed all the procedures and recommended to Government/the Appointing Authority for passing orders only. The part of Government is restricted in the matter. Hence, the contentions raised in the writ petition are not sustainable and devoid of merit and the writ petition is liable to be dismissed.

10 Before going to the contentions of both sides, it is relevant to extract the facts of the case for better appreciation of submissions of both sides.

[a] The writ petitioner was appointed as Civil Judge (Junior Division) by G.O.(Ms) No.1517 Home dated 16.11.1999. In the year 2003, he was posted as District Munsif cum Judicial Magistrate, Kattumannarkoil for a period of one year. Thereafter, he was transferred to various places. While working as Principal District Munsif, Kuzhithurai, on 02.05.2008, he was issued a Charge Memo by the 1st respondent in C.No.40/2004/VC in ROC.No.233/2004 and 298/2004/VC dated 23.04.2008 under Rule 17 (b) of the Tamil Nadu Civil (Service) Servants (Discipline &

Appeal) Rules, for certain allegation of misconduct and corruption said to have taken place during his tenure as Judicial Officer in Kattumannarkoil in the year 2003-2004. The record further shows that as per the direction of the Honourable Chief Justice, The Registrar (Vigilance), High Court, Madras, conducted a discreet enquiry on the allegations made against the writ petitioner by one Mr.Senthilkumar and another anonymous complaint and submitted his report. The Administrative Committee of High Court considered the report and had resolved to frame charges against the officer concerned in respect of the allegations found substantiated. The following charges are framed against the writ petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules:-

"Charge No.1

That you, Thiru.R.Alexander, while functioning as District Munsif-cum-Judicial Magistrate, Kattumannarkoil travelled alongwith Tvl.M.S.Senthilkumar, Thirugnanam and Gopal on 30.10.2003 by Taxi to Coimbatore to give evidence in a sessions case and also stayed at Hotel Vinayaga, Tiruppur, at the expenses of the abovesaid persons; thus committed act of corrupt practice and misuse of power, a conduct unbecoming of a Judicial Officer and thereby rendered yourself liable to be proceeded with under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973 for violation of Rule 20 of the Tamil Nadu Government Servants' Conduct Rules.

Charge No.2

That you, Thiru.R. Alexander, while functioning as District Munsif-cum-Judicial Magistrate, Kattumannarkoil received bribe to the tune of Rs.5,000/- from Thiru.M.S. Senthilkuamr, Advocate, who appeared for the accused in C.C.Nos.98/02 to 102/02, and passed a Judgment of acquittal in the said cases; thus you have committed act of corrupt practice, a conduct unbecoming of a Judicial Officer and thereby rendered yourself liable to be proceeded with under Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973 for violation of Rules 20 of the Tamil Nadu Government Servants' Conduct Rules.

Charge No.3

That you, Thiru.R. Alexander, while functioning as District Munsif - cum - Judicial Magistrate, Kattumannarkoil, in November 2003 purchases a gold chain with a dollar for a sum of

Rs.7,300/- from Manickam Jewellery, Kattumannarkoil through Thiru.M.S.Senthil Kumar, Advocate and paid Rs.5,000/- only and the balance amount of Rs.2,300/- was paid by Thiru. M.S. Senthilkumar, Advocate; thus committed act of corrupt practice and misuse of power, a conduct unbecoming of a Judicial Officer and thereby rendered yourself liable to be proceeded with under Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973 for violation of Rules 20 of the Tamil Nadu Government Servants' Conduct Rules.

Charge No.4

That you, Thiru.R. Alexander, while functioning as District Munsif - cum - Judicial Magistrate, Kattumannarkoil, illegally demanded Rs.75,000/- from Thiru. M.S. Senthilkumar, Advocate, who appeared for four accused in C.C.No.103/02 and the said Advocate, having refused to give the same withdrew his memo of appearance; thus you have indulged in corrupt practice and misuse of power, a conduct unbecoming of a Judicial Officer and thereby rendered yourself liable to be proceeded with under Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973 for violation of Rules 20 of the Tamil Nadu Government Servants' Conduct Rules.

Charge No.5

That you, Thiru.R. Alexander, while functioning as District Munsif - cum - Judicial Magistrate, Kattumannarkoil, illegally demanded Rs.10,000/- from Thiru M.S.Senthilkumar, Advocate for passing a judgment in his favour in CrI.M.P.No.1280/2003 filed seeking interim custody of the Ambassador Car involved in Cr.No.477/03, Komarakshi Police Station; thus you have indulged in corrupt practice and misuse of power, a conduct unbecoming of a Judicial Officer and thereby rendered yourself liable to be proceeded with under Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973 for violation of Rules 20 of the Tamil Nadu Government Servants' Conduct Rules.

Charge No.6

That you, Thiru.R. Alexander, while functioning as District Munsif - cum - Judicial Magistrate, Kattumannarkoil, passed order in CrI.M.P.No.280/2004 filed seeking interim custody

of an Ambassador Car involved in Cr.No.36/04, Kattumannarkoil Police station in favour of Thiru.M.S.Senthilkumar, Advocate, after receiving Rs.10,000/- as bribe from him; thus you have committed act of corrupt practice and misuse of power, a conduct unbecoming of a unbecoming of a Judicial Officer and thereby rendered yourself liable to be proceeded with under Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973 for violation of Rules 20 of the Tamil Nadu Government Servants' Conduct Rules."

[b] Charge proceedings was served on the writ petitioner by order in C.No.40/2004/VC in ROC.No.233/2004/VC and 289/2004/VC dated 23.4.2008 along with questionnaire form requiring the writ petitioner to submit a written statement of defence within fifteen days from the date of receipt of the proceedings. The questionnaire form attached with the charge proceedings also duly resubmitted by the writ petitioner along with explanation to the charges. In the questionnaire form, the writ petitioner has requested oral enquiry in his presence and also stated that the names of the witnesses proposed to be examined on his side would be disclosed at the time of enquiry. The writ petitioner submitted statement of defence for the charges framed against him denying each charge individually. It is the contention of the writ petitioner that the entire complaint lodged by one Mr.Senthilkumar is highly motivated since the writ petitioner has passed some adverse orders in which Mr.Senthilkumar has appeared as advocate. In nutshell, it is the contention of the writ petitioner in the written statement that the complaint is motivated one.

[c] After written statement of defence filed, the same was placed before the Administrative Committee. The Committee had resolved as follows:

"considered the written statement of defence submitted by the officer and found to be not satisfactory. It is resolved to nominate the Principal District Judge, Cuddalore as the Enquiry Officer and the Principal Sub-Judge, Cuddalore as the Presenting Officer. Report to be submitted within three months."

Above resolution was approved by the Honourable Chief Justice.

[d] Pursuant to the same, the Enquiry Officer issued summons to the witnesses. On 12.03.2009 witness No.1, 3, 8 and 9 were examined as P.Ws.1 to 4 and Exs.A1 to A16 were marked. On receipt of summons L.W.2 Mr.R.Gopalsamy and L.W.7 Mr.S.

Nithiyanandam sought fresh date for their appearance due to some personal inconvenience. Thereafter, they were present before the Enquiry Officer on 13.03.2009 and examined as P.Ws.5 and 6. Exs.A.17 to A.20 were marked through them. L.W.6 one Mr.Nagarajan, Advocate of Thiruppur, sought fresh date for his appearance. Hence, enquiry was adjourned to 23.03.2009. It is to be noted that on 12.03.2009 and 13.03.2009, witnesses were examined on the side of the department and they have not been cross examined by the delinquent officer. Thereafter, on 25.03.2009, the delinquent officer along with his Delinquent Officer's Assistant filed an application for recalling of the witnesses for cross examination. His plea was acceded and the witnesses were recalled for cross examination and the summons were issued to P.Ws.1 to 5 and witness No.6 to appear on 16.04.2009. On 16.04.2009 despite the witnesses were present, the delinquent officer was not present and telegram was sent on his behalf by his wife to the Enquiry Officer stating that the delinquent officer was unwell and he was admitted in the hospital, hence sought an adjournment. The counsel for the delinquent officer was also absent on that day. The Enquiry Officer had no other option except to adjourn the enquiry to 02.06.2009 for the appearance of the witnesses, as the witnesses expressed their inability to appear in the month of April 2009.

[e] On 17.06.2009, P.W.2 to P.W.5 were present and they were cross examined. Thereafter, fresh summons were issued to P.W.1 Mr.Senthilkumar and L.W.6 Mr.Nagarajan for appearance before the Enquiry Officer on 27.06.2009. On 27.06.2009, only P.W.1 was present and L.W.6 was not present. During the cross examination of P.W.1, when the cross examination was half way through, objecting to the mode of questions and the manner of recording his evidence P.W.1 abruptly went away from the proceedings and did not sign his cross examination and did not co-operate for the cross examination. The Enquiry Officer, having noted the demeanor of P.W.1, had closed the enquiry as L.W.6 was also not present on that day. It is to be noted that when the enquiry was closed on 27.06.2009, the delinquent officer was very much present. The delinquent officer had not given any list of witnesses proposed to be examined by him to the Enquiry Officer, as stated by him in the questionnaire attached to charge proceedings. Therefore, the Enquiry Officer having completed the examination of witnesses also sent a report about the demeanor of P.W.1 and came to the conclusion that there is no possibility of continuing the examination of witnesses and sought further time to complete the enquiry.

[f] It is to be noted that L.W.6 Mr. Nagarajan though appeared before the enquiry officer in initial period, he was not examined since the delinquent officer wanted to examine him after the cross examination of P.W.1. As P.W.1 did not co-

operate for cross examination, thereafter, L.W.6 also not appeared, the enquiry was closed. However, the delinquent officer, despite his presence, has not provided any list of witnesses proposed to be examined by him, at the time of enquiry, as stated by him in the questionnaire form. Further, notes paper dated 23.12.2008 also shows that the delinquent officer was permitted to inspect the documents in the presence of the presiding officer. Meanwhile, the Enquiry Officer sent a communication to the delinquent officer to submit his written arguments, if any, by his letter dated 3.8.2009 in D.No.437 within a week. The delinquent officer sent a communication dated 26.08.2009 sought further one week time to submit his written arguments. The above request was considered by the Enquiry Officer by his order dated 3.9.2009 wherein the delinquent officer granted time to submit his written arguments on or before 4.9.2009.

[g] It is to be noted that when the communication was sent by the Enquiry Officer, after closing the enquiry on 27.06.2009, either on the date of closure of enquiry or till 26.08.2009, the delinquent officer has not given list of witnesses proposed to be examined by him. Even in his communication dated 26.08.2009 seeking further one week time for filing his arguments, he never whispered anything about non-providing of opportunity to adduce any evidence on his side. Even his letter dated 26.08.2009, if really he had any intention to examine any witness on his side, the delinquent officer would have sought permission of the Enquiry Officer to examine witnesses on his side. That has not been done so. Therefore, it is now cannot be contended by the delinquent officer that the Enquiry Officer has not given any opportunity to examine the defence witnesses. He had already stated even in the questionnaire form attached to the charge memorandum. The delinquent officer was specific in his stand that he will take a decision as to examination of his side witnesses at the time of enquiry. Though the enquiry was closed in view of the non co-operation of P.W.1 on 27.06.2009, the delinquent officer, despite the opportunity was very much available to him, has not taken any steps nor furnished any list of witnesses proposed to be examined by him. It is curious to note that even after, when he was given an opportunity to file his written arguments, in his communication dated 26.08.2009, he never complained of failure of opportunity, on the other hand, he only sought further one week time to file his written arguments. Thereafter, the delinquent officer submitted his written submissions. As no defence side witness examined. The Enquiry Officer considered the written submissions and also took note of the fact that P.W.1 did not complete his examination and he has done enough damage to weaken the proceedings initiated against the delinquent officer. The Enquiry Officer in fact did not

consider his evidence, however, taken note of the evidence of other witnesses available on record, found the charge Nos.1 and 3 framed against the delinquent officer were proved and other charges have not been proved and submitted his findings to the first respondent.

[h] The findings of the enquiry officer was placed before the Administrative Committee and the Administrative Committee resolved as follows:

"The findings of the Enquiry Officer has been considered by the Hon'ble Administrative Committee and it is resolved to accept the findings of the Enquiry Officer and it is further resolved to issue a second show cause notice to the delinquent officer viz., Thiru R.Alkexander, formerly District Munsif cum Judicial Magistrate, Kattumannarkoil, Cuddalore District, proposing to impose punishment of dismissal from service."

[i] Accordingly, show cause notice was issued to the delinquent officer on 30.05.2011, called upon him to show cause, as to why the punishment of dismissal from service should not be imposed upon him and directed to make further representation within 15 days from the date of receipt of the official memorandum. By communication dated 26.07.2011, the delinquent officer sought for certain documents viz., notes paper of the Enquiry Officer from the beginning of the enquiry till the completion of the enquiry and the written arguments submitted by the delinquent officer dated 03.07.2011 submitted through covering letter dated 07.07.2011 for submitting his further representation. It is to be noted that it is not the case of the delinquent officer that he was not given any opportunity to adduce oral evidence on his side, whereas he only sought for notes papers of the enquiry officer and a copy of the written arguments submitted by him. It is also to be noted that while the delinquent officer was directed to give further representation, he was served with a copy of the enquiry findings. Again on 26.08.2011 similar request was made by him for the supply of two documents for further representation and again on 28.10.2011 he sought further two weeks time to give reply. In all the communications, it is not the case of the delinquent officer that he was not given any opportunity to examine the defence witnesses before the Enquiry Officer. The request of the delinquent officer was placed before the Administrative Committee and the Administrative committee had resolved as follows:

"In view of the fact that a copy of the findings of the Enquiry Officer has already been furnished to the delinquent officer,

furnishing of the notes paper as sought for by him may not be necessary and therefore the request made by him in this behalf cannot be acceded."

[j] It was also queried by the Administrative Committee that the written arguments submitted by delinquent officer himself, therefore, why the delinquent officer wants the same. However, he was granted time to submit his further representation upto 16th January 2012. The delinquent officer submitted his explanation to the show cause notice on 12.01.2012 and thereafter, the Administrative Committee on 17.02.2012 minuted as follows:

"Considered. The explanation offered by the delinquent officer is found not acceptable and no grounds are made out to reopen the enquiry. It is therefore resolved to impose the proposed punishment of Removal from service and place the matter before the Full Court for approval."

[k] In the Full Court meeting held on 18.04.2012, it was resolved to approve the resolution of the Administrative Committee imposing the punishment of removal from service of the delinquent officer. Thereafter, the matter was sent to the second respondent through the first respondent on 08.05.2012 and the second respondent the Governor of Tamil Nadu after careful and independent examination of the case with connected records has decided to accept the resolution of the Administrative Committee, as approved by the Full Court and proposal of the Registrar General, High Court. Based on the impugned order, the writ petitioner was imposed punishment of removal from service.

11 From the facts as narrated above, the contention of the writ petitioner that he was not given sufficient opportunity and there were violation of principles of natural justice during enquiry, cannot be countenanced at all. From the beginning to end during the enquiry there were many opportunities granted. In fact witnesses were examined in the presence of delinquent officer and documents were also marked in his presence. The enquiry officer's letter dated 13.03.2009 available on record also shows that despite the presence of witnesses on the scheduled date, the delinquent officer, inspite of sufficient notice and time given to him, has not appeared to cross examine witnesses and in fact one of the occasions, witnesses represented that they will not come again if they were not cross examined immediately, stated that they were harassed by repeatedly requiring to appear. The facts narrated above on the basis of the records available and adjudications and orders of the Enquiry Officer available in the record, we are of the

view that due procedure has been followed during enquiry. Despite the presence of witnesses, the cross examination has not been done on the scheduled date. Witnesses were cross examined after filing recall petition by the delinquent officer and P.Ws.2 to 5 were cross examined on 17.06.2009 and P.W.1 sought further time and came for cross examination, he did not co-operate for completion of enquiry. He went away without signing the deposition. However, the Enquiry Officer noted the unruly behaviour of P.W.1 in non co-operating for the enquiry and also recorded his displeasure over the attitude of P.W.1. Therefore, with the remaining evidence available on record, the enquiry was closed as early as 27.06.2009. The records also reveals that only at the instances of the delinquent officer, witness No.6 could not be examined, since the delinquent officer wanted to cross examine P.W.1 first, before examining P.W.6. At any event, the Enquiry Officer has considered the evidence of other witnesses available on record and arrived at finding. From the available materials on record and on perusal of the enquiry proceedings, we are of the view that the contention of the writ petitioner that he was not given any opportunity to adduce the evidence of defence witness cannot be countenanced. Even till filing of his written arguments, it was not the grievance of the writ petitioner that he should be given an opportunity to examine witnesses on his side as narrated in the earlier part of our discussion. Therefore, we are of the view that the contention of the writ petitioner that the principles of natural justice were not followed during the enquiry, falls to the ground.

12 Now, in the above back ground, we will have to analyse the other submissions of the learned Senior Counsel about the procedural violations in the entire enquiry proceedings.

13 It is the admitted fact that after the enquiry, findings were placed before the Administrative Committee and the Administrative Committee accepted the findings and sent a copy of the enquiry findings to the writ petitioner with a direction to the writ petitioner to submit his further representation to show cause as to why the proposed punishment of removal from service should not be imposed. Whether such action on the part of the first respondent issuing show cause notice before giving copies of the enquiry findings to the delinquent officer vitiated the entire departmental proceedings?

14 In this regard the learned Senior Counsel placed much reliance on the judgment of the Constitution Bench of the Honourable Supreme Court reported in (1993) 4 Supreme Court Cases 727 [Managing Director, ECIL, Hyderabad and others v. B.Karunakar and others]. The relevant portions of the judgment

are as follows:

"26. The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material

unknown to the employee but are taken into consideration by the disciplinary, authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary, authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

27. It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

28. The position in law can also be looked at from a slightly different angle. Article 311 (2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry Officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry to impose upon him any such penalty such penalty may be imposed on the basis of the

evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the Inquiry Officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the Inquiry Officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the Inquiry Officer. The latter right was always there. But before the 42nd Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the 42nd Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry Officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

29. Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the

charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

15 From the above dictum, the Constitution Bench has stated that after the 42nd Amendment of the Constitution is to advance the point of time at which the representation of the employee against the Enquiry Officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges. Further in the above dictum, the Honourable Apex Court has also held that irrespective of any rule governing disciplinary proceedings prohibit furnishing of copies of the report, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records his findings on the charges levelled against him.

16 In the above judgment the Honourable Supreme Court in para 30(v) has also considered the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee before the disciplinary authority proposed to impose punishment. It is relevant to extract the relevant portion of the judgement:

"(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They

are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice."

The above judgment makes it clear that non-furnishing of copies of the report to the delinquent employee before the disciplinary authority records his finding has caused any prejudice to the employee or not has to be considered with the facts and circumstances of each case. From the above judgment, it is very clear that unless the prejudice shown and established, mere failure to adhere the procedure would not vitiate the entire disciplinary proceedings. In para 31 of the above judgment, the Apex Court has held that only the Court or the Tribunal in such cases, after hearing the parties can come to the conclusion on the facts of each case whether prejudice caused or not.

17 In (1999) 7 Supreme Court Cases 739 [Yoginath D. Badge v. State of Maharashtra and Another] the Honourable Supreme Court has held as follows:

"37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned counsel is that a final decision with regard to the charges levelled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank (supra) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority

does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case."

From the above judgment, the Honourable Supreme Court made it clear, whenever disciplinary authority does not agree with the findings of Enquiry Officer that the charges are not proved and proposed to impose a punishment on such findings, an opportunity should be given to the delinquent and the enquiry report should be furnished to him before coming to the conclusion to impose punishment. The above judgment also made it clear, if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court to interfere in the findings.

18 It is the contention of the learned Senior Counsel if the explanation properly considered and written representation has been properly considered, the Administrative Committee would not have come to the conclusion for imposition of major punishment. In fact, to prove the fact that the delinquent officer has travelled in a bus to Coimbatore on 30.10.2003 the delinquent officer has submitted T.A.Bill to the District Court, despite order of the Enquiry Officer to summon above register the same has not been considered. Therefore, there is serious prejudice caused to the delinquent officer. In this regard, it is to be noted that though the delinquent officer has filed an application for summoning this document to show that the so called T.A.Bill was submitted by him. Such factum of submitting the T.A.Bill is not even whispered in the explanation given by the delinquent officer for the charge proceedings. Further, despite the opportunity was available to the delinquent officer, he ought to have taken some steps to examine the concerned court officials. But he remained silent. Having failed to avail the opportunity, only at the fag end of the proceedings he cannot claim that there was serious prejudice caused. We are also aware of the fact that the possibility of submitting such bills at later point of time, that too when the specific charges framed in that regard cannot be ruled out. His representation shows that he has submitted the T.A.Bill in the month of November 2003. It is to be noted that the claim of travelling allowance bill normally required to be submitted

within three (3) months as per the existing rules. There was no reason as to why the T.A.Bill was not submitted immediately after his official visit allegedly through Bus. That question lingering us as to genuinity of the bill itself. At any event when sufficient opportunity was very much available, the delinquent officer failed to adduce any evidence, he cannot complain at later point, that too, when the administrative committee has taken a decision to accept the findings and sought further representation. Hence, we are of the view that no prejudice is caused to the writ petitioner as far as the alleged T.A.Bill concerned. Therefore, the contention of the learned Senior Counsel cannot be countenanced.

19 Another submission of the learned Senior Counsel is that the explanation submitted by the delinquent officer has not been considered by the Administrative Committee and no reasons were assigned. The Administrative Committee, in fact, has considered his representation and found not satisfactory. Therefore, we are of the view that when the committee of Senior Judges found the explanation is not satisfactory, detailed reasons for their decision disagreeing with the explanation not necessary.

20 It is the another contention of the learned Senior Counsel that the Government is also passed order simply accepted the findings of the resolution of the Administrative Committee and Full Court. We have perused the impugned order passed by the second respondent. In fact, the Government taking into consideration of the resolution of the Administrative Committee as well as the Full Court independently also seeing the records and passed the impugned order. Therefore, it cannot be said that there is a non-application of mind. In this regard it is useful to refer the decision of the Honourable Supreme Court reported in AIR 1966 SC 1827 [State of Maharashtra v. A.R. Srinivasan] in which it is held as follows:

"15. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such

a case, it is not necessary that the reasons should be detailed or elaborate.
..."

21 In Registrar (Administration) High Court of Orissa, Cuttack v. Sisir Kanta Satapathy reported in AIR 1999 SUPREME COURT 3265 (Constitution Bench), it is held as follows:

"15. On going through the judgments of this Court right from Shyam Lai v. State of U.P., [1955] 1 SCR 26 down to High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal & Anr, [1998] 3 SCC 72, one cannot but reach one conclusion regarding the power of the High Court in the matter of ordering compulsory retirement. That conclusion is that the High Courts are vested with the disciplinary control as well as administrative control over the Members of the Judicial Service exclusively, but that does not mean that they can also pass orders of dismissal, removal, reduction in rank or termination from service while exercising administrative and disciplinary control over the Members of Judicial Service. Undoubtedly, the High Courts alone are entitled to initiate, to hold enquiry and to take a decision in respect of dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed only by the State Governor on the recommendation of the High Court. It is well settled again by a catena of decisions of this Court that the recommendation of the High Court is binding on the State Government/Governor [vide para 18 in Inder Prakash Anand's case (supra)]. (Emphasis supplied)

22 From the above dictum, State Government has to pass only a formal order being an appointing authority on the recommendation of the High Court, we are of the view that the Government is bound by the recommendation of the High Court. At any event, the Constitution Bench of the Honorable Supreme Court in AIR 1966 Supreme Court 1827 [State of Maharashtra v. A.R. Srinivasan] held that only when the state Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent office, it should give reasons as to why it differs from the conclusions of the Tribunal, though even in such a case

it is not necessary that the reason should be detailed or elaborate. Whereas in this case on hand, impugned order shows that apart from considering the resolution of the Administrative Committee as well as Full Court, materials also perused by the Government before passing the impugned order. Therefore, the contention of the learned Senior counsel that the impugned order suffered from non-application of mind has no basis.

23 Another contention of the learned Senior Counsel that the documents appended with the further representation has not considered by the Administrative committee. As already stated, Administrative Committee has considered the further representation which includes the materials attached with further representation. Therefore, merely because there was no mention about the documents separately, by the Administrative Committee, it cannot be stated that those documents have not considered at all. The Administrative Committee and Full Court by their opinion and collective wisdom considered the representation before imposing major punishment. Therefore, we have no reason to accept the contention of the learned Senior Counsel in this regard.

24 Now, coming to the contention of the learned counsel for the writ petitioner that the entire complaint is motivated and the evidence available on record is not sufficient to prove the charges and the finding is perverse based on no evidence. Before going into the merit of the above contention it is useful to extract the dictum of the Apex Court in various judgments. Learned Senior Counsel placed reliance on the following judgments in this regard:-

25 AIR 1998 Supreme Court Cases 1395 [Ishwar Chand Jain v. High Court of Punjab and Haryana and another] In this case the Apex Court held that when the officer was dismissed on the ground that officer's work and conduct were not satisfactory and the report not showing officer's work and conduct is unwarranted. In the above case only based on the vigilance judge report, High Court has recommended for dismissal without any enquiry.

26 In (1999) 2 Supreme Court Cases 10 [Kuldeep Singh v. Commissioner of Police and others] the Honourable Supreme Court has held that power of judicial review available to the High Court as also to the Apex Court under the constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no

evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse.

27 In (2002) 7 Supreme Court Cases 142 [Sher Bahadur v. Union of India and Others] the Honourable Apex Court held that the findings should not be based on the oral documentary and circumstantial evidence adduced in the enquiry, it must link the charged officer with the alleged misconduct.

28 Similarly, in (2006) 4 Supreme Court Cases 713 [Narinder Mohan Arya v. United India Insurance Co. Ltd., and others] the Honourable Supreme Court has held that when the finding arrived in the departmental proceedings, based on no evidence, the same could be interfered.

29 In 2006(4) Supreme Court Cases 301 [Nirmala J.Jhala v. State of Gujarat and Another] the Honourable Apex Court has also held that judicial review is permitted when the conclusion of the Enquiry Officer is not based on the evidence.

30 In 2009 Supreme Court Cases Online Guj 10306 [S.J. Pathak v. State of Gujarat] the High Court of Gujarat has held that the judicial pronouncement in the absence of clear cut evidence of favouritism, lack of integrity, corrupt practices, extraneous consideration etc., cannot be the foundation of disciplinary proceedings.

31 In (2010) 1 MLJ 977 [S. Seetharaman v. Registrar General, High Court, Chennai and another] this Court has held that since there is no appeal remedy available to him only course open to the writ petitioner to file writ petition. In view of the above situation, to uphold the majesty of justice, the Court has to see whether the writ petitioner was given adequate and sufficient opportunities and there was no violation of principles of natural justice.

32 In 1999 Supp(4) SCR 205 [High Court of Judicature at Bombay Vs. Shashikant S. Patil & Anr.], highlighting a marked and significant difference between a judicial service and other services, speaking for a bench of three Judges, K.T. Thomas, J. observed as follows:

"23. The Judges, at whatever level they may be, represent the State and its authority, unlike

the bureaucracy or the members of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. They are holders of public offices of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect would be disastrous and deleterious". A dishonest judicial personage is an oxymoron."

In short, it is the constitutional mandate that every High Court must ensure that the subordinate judiciary functions within its domain and administers justice according to law, uninfluenced by any extraneous considerations. The members of the subordinate judiciary are not only under the control but also under the care and custody of the High Court."

33 In the judgment reported in LAWS(SC)-2014-11-52 [Union of India v. P Gunasekaran] the Apex Court held thus:

" 13. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;
(ii). interfere with the conclusions in the enquiry, in case

the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;
(iv). go into the reliability of the evidence;
(v). interfere, if there be some legal evidence on which

findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it

shocks its conscience.

14. In one of the earliest decisions in State of Andhra Pradesh and others v. S. Sree

Rama Rao[1], many of the above principles have been discussed and it has been concluded thus:

"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

34 In 2006 (2) L.L.N.353 [Union of India v. Central Administrative Tribunal] this Court held that the appreciation of evidence is the exclusive domain of the disciplinary authority, to consider the evidence on record and to render

findings, whether charges have been proved or not. In judicial review, the Court or Tribunal has no power to traverse upon the jurisdiction and to arrive its own conclusion.

35 In AIR 1998 Supreme Court 2592 [Director General, Indian Council of Medical Research and others v. Dr. Anil Kumar Ghosh and another] the Honourable Supreme Court has held that when sufficient opportunity given to examine the witnesses not availed by the delinquent officer, plea of non-examination of officials at later stage is untenable.

36 In AIR 1982 Supreme Court 673 [J.D. Jain v. The Management of State Bank of India and another] the Apex Court held that the strict rules of evidence are not applicable in a domestic enquiry, even a circumstantial evidence is enough.

37 Similarly in (1977) 2 Supreme Court Cases 491 [State of Haryana and another v. Rattan Singh] the Honourable Supreme Court held that In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The simple point in all these cases is, was there some evidence or was there no evidence – not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept.

38 In an unreported judgement of this Court in W.P.No.15983 of 2007 dated 30.07.2010 [R.Kalarani v. The state of Tamil Nadu] it is held that the honesty and integrity of judicial service is expected to be beyond doubt. It should be reflected in their overall reputation and further, the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility.

39 From the above judgments it is very clear that strict rules of evidence not applicable to domestic enquiry. Similarly, only preponderance of probabilities are enough to give a finding. It is also well settled that it is the duty of the High Court to protect the honest judicial officer from the false and motivated complaint from the unscrupulous lawyers and

litigants. Only finding of the Enquiry Officer is perverse and based on no evidence, judicial review is permitted.appreciated.

40 Though six charges were framed by the first respondent, only Charge No.1 and 3 found proved. The findings of the Enquiry Officer shows that in view of the fact that P.W.1 did not co-operate for completion of the cross examination, his evidence was not considered. Whereas the Enquiry Officer considered the evidence of other witnesses along with documents and found the charges 1 and 3 proved against the delinquent officer. We also deem it to peruse the evidence to meet the ends of justice, as there is no appeal remedy available, writ petition is alone maintainable against the impugned order.

41 The charge No.1 is with regard to the delinquent officer travelling in a taxi on 30.10.2003 and stayed in a Hotel along with witnesses Tvl.M.S.Senthilkumar, Thirugnanam and Gopal at their expenses and Charge No.3 is with regard to purchase of gold chain with a dollar for a sum of Rs.7,300/- from Manickam Jewellery, Kattumannarkoil through Mr.M.S.Senthilkumar, Advocate and paid a sum of Rs.5,000/- and the balance amount of Rs.2,300/- paid by Mr.M.S.Senthilkumar, Advocate. We need not delve upon other charges as the same were not proved.

42 The Enquiry Officer did not consider the evidence of P.W.1, on whose complaint, enquiry was commenced. Though P.W.1 has given detailed evidence in chief examination on 12.03.2003 and subsequently enquiry was adjourned to 25.03.2009 for cross examination. During the cross examination, he replied the questions for some time, thereafter making certain allegation against the Enquiry Officer, abruptly left the place without giving evidence. P.W.2, P.W.5 and P.W.6 have been examined to prove charge No.1. In their evidence P.W.2 and P.W.5 stated that 5 years before the enquiry they went to Thiruppur along with delinquent officer in a white ambassador car. They all reached Thiruppur and one Mr.Nagarajan, an advocate, known to P.W.1 booked room. They all stayed in the room. Next day morning, delinquent officer went to Coimbatore in the same car. P.W.6 Manager of Hotel Vinayaga in his evidence has stated that Room Nos.405 and 407 were booked by one advocate Mr.Nagarajan for two days i.e., on 30.10.2003 and 31.10.2003. The receipt of rent paid for the rooms is marked as Ex.A.17. P.W.2 in his evidence has also stated that the delinquent officer travelled in the car. The fact that the delinquent officer left to Coimbatore is not in dispute. In fact, he has gone on other duty to give evidence in a sessions case. The witnesses have clearly spoken about the fact that he

has travelled only through car. All of them travelled together and stayed in hotel booked by Mr.Nagarajan. Though the said Mr.Nagarajan was not examined, we are of the view that as extracted earlier part of discussion, Mr.Nagarajan could not be examined since the delinquent officer wanted to examine him after the completion of cross examination of P.W.1. As the cross examination of P.W.1 could not be completed, as P.W.1 left abruptly, said Mr.Nagarajan was also not examined. It is to be noted when the said Mr.Nagarajan was very much present, he could not be examined. When sufficient opportunities given at the relevant point of time, the delinquent officer has not availed it.

43 When one of the witnesses viz., P.w.1 withdrew from the proceedings and not signed in the deposition, that cannot be taken advantage of by the delinquent officer now to contend that L.W.6 has not been examined. The evidence of P.W.2, P.W.5 and P.W.6 probablise the department theory that on 30.10.2003 the delinquent officer went to Thiruppur with the witnesses in a car. Merely because P.W.4 happened to be a clerk of P.W.1, it cannot be said that his evidence cannot be true at all. We are also aware of the fact that only cantankerous advocates will adopt all illegal methods to corrupt officials and they will be more beneficiaries due to such close contact with the officers who fall prey to such unscrupulous lawyers. It is also hard reality that as long as the relationship with such cantankerous lawyers continues, there would not be any problem at all for the corrupt officials. Only when the relationship is strained, normally complaints are floated against such officers. Therefore, we are of the view that merely because some lawyers who took advantage of the corrupt officials and filed complaint subsequently, it cannot be said that the entire complaint should be thrown out. It is hard to get documents and evidence as against the corrupt officials. The evidence of P.W.2, P.W.5 and P.W.6 clearly show the fact that the delinquent officer staying with them. Though Ex.P.19 and 20 filed to show that some payments were paid towards booking of room, merely because of the timing in the bills as to arrival time, and number of persons differs from the witness statement that cannot be given much importance. Normally rooms are booked in advance and when the rooms are booked, the time of booking will appear in the bills. Therefore, merely because the witnesses and delinquent officer reached to hotel in different time other than the time mentioned in the bill, it cannot be stated that entire charge is baseless.

44 It is the specific case of the delinquent officer that he stayed in his sister's house on 30.10.2003 and left to

Coimbatore only on the next day morning. Nothing prevented him from examining his sister during the enquiry, despite he had sufficient opportunity. It is further to be noted that in his further representation there is no whisper about the timing and what time he left to coimbatore on 31.10.2003 from Trichy. It is a common knowledge that to reach Coimbatore from Trichy in a bus, ordinary travel time will be 5.00 to 5.30 hours. Admittedly, the delinquent officer has appeared before the Sessions Court for evidence. Normally court work commences at 10.30 a.m. Therefore, it is highly improbable to contend that he reached Coimbatore in the morning after staying in his sister's house in the previous night. Therefore, we are of the view that merely some inconsistency and contradictions found in the evidence of P.W.2, P.W.5 and P.W.6, it cannot be said that there is no evidence at all to arrive at a finding. When the probabilities clinchingly establish the delinquent officer has accompanied the witnesses and stayed in hotel at the expenses of other, it is nothing but corrupt practice. Merely because P.W.6 manager of the hotel has not identified the delinquent officer in the enquiry, we cannot discard the entire evidence. Strict rule of evidence cannot be applied in a domestic enquiry and only preponderance of probabilities and circumstances alone sufficient to arrive a finding. As already discussed T.A.Bill was also not submitted within time to substantiate his contention. All these probabilities in fact proved Charge No.1.

45 With regard to Charge No.3, even keeping aside the evidence of P.W.1, P.W.3 has deposed that P.W.1 requested him certain jewels for Magistrate and he took 2 or 3 chains to show to the Magistrate. Thereafter, P.W.1 requested him to do another chain with some other model. Accordingly, he and P.W.1 went to the Magistrate's house and gave the chain and Magistrate paid only Rs.5,000/-. Remaining amount has been paid by the advocate. P.W.4 stated that he has also accompanied P.W.3 to Magistrate's house and gave the chain and the Magistrate has given only Rs.5,000/-. Merely, because P.W.4 working as clerk with P.W.1 for some time, his evidence cannot be discarded. Similarly P.W.3 is goldsmith, running jewellery shop. His evidence also clearly proves the charge. Merely because P.W.3 is known to P.W.1 for more than 10 years, we cannot presume that he has given evidence against P.W.1. Kattumannarkoil is a small place and it is normal for the shop owners and business people knowing the lawyers practising in the Court. Merely because they are known to lawyers, we cannot presume that the witnesses have been tutored by P.W.1. Hence, evidence of P.W.2 and P.W.3 can be discarded on the ground that their version is not corroborated by any other witnesses. In fact P.W.2 and P.W.3 evidence itself direct and substantive in nature, hence no

corroboration is necessary for their evidence.

46 From the evidence, the probabilities have been clearly established. It cannot be said that there is no evidence at all. Chief examination of P.W.3 and P.W.4 when perused it is clear that they visited Magistrate's house and gave jewels. Their specific evidence that they visited the house of the Magistrate was not even denied in cross examination; not even a suggestion was put to them. Therefore, we are of the view that the contention of the learned Senior Counsel that there is no evidence and finding recorded by the Enquiry Officer is perverse, cannot be countenanced. The Enquiry Officer considered the written submissions filed by the delinquent officer and also taken note of the documents and written submissions and arrived at the conclusion. Hence, we do not find any circumstances to hold that there is no evidence or the findings of the Enquiry Officer perverse. In fact evidence of the witnesses clearly establish the charge Nos.1 to 3. Therefore, we are of the view that the findings of the Enquiry Officer accepted by the Administrative Committee and Full Court applying their mind and collective wisdom, the impugned order cannot be assailed merely on the technical grounds.

47 As discussed above, no prejudice shown or established on record. There is no violation of principles of natural justice and the Enquiry Officer also arrived at the finding on the evidence and probabilities available on record. Hence, the impugned order cannot be found fault with. Merely because some documents have been filed by the writ petitioner at the time of submitting his representation, to show that P.W.1 appeared as an advocate that itself cannot be a ground to reach a conclusion that the entire proceedings are motivated one. Even perusing some of the documents, merely because P.W.1 appeared for one of the employees against whom disciplinary proceedings initiated by the delinquent officer, that cannot be taken as motive. Hence, we have no reason to interfere with the order passed by the second respondent.

48 Judicial Officers are the backbone of the judicial system. Entire independence of judiciary is always depends upon the character, conduct, honesty and integrity, etc., of each of the judicial officers. Any one of the judicial officer is tainted with any of the above characters, the independence of the judiciary would be at peril and would be laughingstock. It is hard reality that direct evidence is not coming forth as against the corrupt officials. When the disciplinary authority taken note of enquiry report and passed an order, such order

cannot be mechanically interfered merely on the ground of technicality. Hence we have persuaded ourselves not to interfere with the order of the Second Respondent imposing the punishment of removal of the delinquent officer from service. Accordingly, the writ petition fails and the same is liable to be dismissed.

49. In the result, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

AP/ggs
To

1. The Registrar General
High Court, High Court Buildings
Chennai 600 104.
2. The Principal Secretary to
Government, Home [Courts I] Department
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Copy to

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High Court, Madras
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+2ccs to Mr.S.D.Venkateswaran, Advocate, S.R.No.14298
+1cc to Mr.C.T. Mohan, Advocate, S.R.No.14140
+1cc to the Government Pleader, S.R.No.14506

WP.No.33469 of 2013

SSV(CO)
CS/15/03/18